

REPORTER'S RECORD
VOLUME 2 OF 3 VOLUMES
TRIAL COURT CAUSE NO. D-1-GN-22-000058
COURT OF APPEALS NO. TBD

EX PARTE) IN THE DISTRICT COURT
vs.)
JESUS ALBERTO GUZMAN) TRAVIS COUNTY, TEXAS
CURIPOMA)
126TH JUDICIAL DISTRICT

WRIT OF HABEAS CORPUS

On the 13th day of January, 2022, the following proceedings came on to be held in the above-titled and numbered cause before the Honorable Jan Soifer, Judge Presiding, held in Austin, Travis County, Texas, via videoconference.

Proceedings reported in computerized machine shorthand by a Texas Certified Shorthand Reporter, Certification Number 4471.

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**ALL PARTIES APPEARED REMOTELY
VIA ZOOM VIDEOCONFERENCE**

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1 PROCEEDINGS

2 January 13, 2022

3 *****

4 THE COURT: Good morning, everyone. We
5 have a few preliminary things to take up this morning;
6 but I'll start with some instructions and announcements.

7 We're holding this hearing remotely
8 through Zoom pursuant to the existing Emergency Orders
9 resulting from the pandemic, a sentence I was hoping I
10 wouldn't have to say in 2022. But this hearing is being
11 livestreamed on the Court's YouTube channel pursuant to
12 the Open Courts provision of the Texas Constitution. No
13 recordings of this hearing are permitted by anyone
14 participating or watching other than by the official
15 court reporter of this Court.

16 There has been a request by CBS Austin to
17 record the livestream. Normally, we have a local rule
18 that deals with that, but it has to do with cameras in
19 the courtroom. And cameras in the virtual courtroom
20 don't cause the same problems as cameras in our actual
21 courtroom, which can be quite cramped and crowded, and
22 the cameras and the reporters can get in the way of the
23 proceedings.

24 So, generally, I do allow these requests;
25 but I will let y'all tell me if you have any objection

1 to CBS Austin recording the livestream.

2 (No response)

3 THE COURT: All right. Hearing none, then
4 that request is approved. Other than the court reporter
5 and CBS Austin, any violations of this instruction not
6 to record and other instructions are punishable by
7 contempt of court.

8 A couple of other instructions. When
9 you're not speaking, please mute your microphone. That
10 does tend to improve the sound quality of the people who
11 are speaking. Please don't speak when someone else is
12 speaking. The court reporter can only hear one voice at
13 a time. So if two people are speaking at once, she
14 can't get all of what either person is saying; and we do
15 have a court reporter who is trying to make a record.
16 So -- the other issue on that is just to speak at a
17 normal speed. Don't speed up too much. She is
18 certified for up to 250 words a minute, which is a lot,
19 but we do have lawyers clock in a lot higher than that
20 from time to time.

21 So let me just ask if each of you received
22 and understood the procedures for remote hearings my
23 staff sent you and the instructions that I just gave
24 you.

25 Ms. Taylor.

1 This also serves as a sound check so we'll
2 make sure we can hear you.

3 MS. TAYLOR: Your Honor, I guess I would
4 go ahead and make an appearance for the State of Texas,
5 Holly Taylor for the Travis County District Attorney's
6 Office. And I certainly have heard and understood your
7 instructions this morning.

8 Thank you.

9 THE COURT: Thank you.

10 Ms. Dyer.

11 MS. DYER: Good morning, Judge. I have
12 not received your instructions. I am a witness in this
13 case. So --

14 THE COURT: All right. Who are you a
15 witness for? Who has asked you to appear today?

16 MS. DYER: Ms. Cogliano.

17 THE COURT: All right. Well, I think --
18 for those of you are aren't lawyers, the instructions
19 that I just gave you are the ones that you need to be
20 concerned about, not speaking too fast and not speaking
21 at the same time as anyone else. Also, if you are
22 speaking and somebody says the word "objection," you
23 should stop speaking; the person who made the objection
24 needs to tell me briefly the nature of -- or basis of
25 their objection; and then the speaker can start again

1 when I'm done.

2 All right. Ms. Nicolas?

3 MS. NICOLAS: Good morning, Your Honor.
4 I'm appearing for the State with the Travis County
5 District Attorney's Office. And I have received and
6 understood your instructions.

7 THE COURT: Thank you.

8 Ms. Cogliano.

9 MS. COGLIANO: Yes, Judge. I represent
10 Mr. Guzman Curipoma, the applicant in this case. And I
11 also have received and understood your instructions.

12 I also would like to bring to the Court's
13 attention that we do have an interpreter that is
14 available and certified, and we're just waiting on her
15 to finish something. She just texted my co-counsel that
16 she is on her way to log on.

17 THE COURT: All right. And is that
18 Ms. Leon, Sofia Leon?

19 MS. COGLIANO: Yes, ma'am.

20 THE COURT: All right. So when Ms. Leon
21 appears, we will let her in to this room.

22 Mr. Schulman.

23 MR. SCHULMAN: Good morning, Your Honor.
24 I have seen -- listened to your instructions. I
25 understand them.

1 I am appearing for the Kinney County
2 Attorney's Office, and we have some objections to make
3 before the rest of the proceedings commence.

4 THE COURT: Ms. Etter.

5 MS. ETTER: Good morning, Your Honor. I'm
6 Kristin Etter. I'm an attorney with the Texas Rio
7 Grande Legal Aid, and I'm a witness this morning for the
8 applicant. And I have understood your instructions
9 verbally that you just provided this morning.

10 Thank you.

11 THE COURT: All right.

12 Ms. Miró.

13 MS. MIRÓ: Good morning, Your Honor. I am
14 here with co-counsel Angelica Cogliano representing
15 applicant. I have received and understood your
16 instructions.

17 THE COURT: And, Mr. Guzman Curipoma -- am
18 I saying that right?

19 MR. GUZMAN: Good morning, Your Honor.

20 THE COURT: Good morning. Could you
21 please turn on your camera?

22 MR. GUZMAN: Okay.

23 THE COURT: Thank you.

24 MR. GUZMAN: You're welcome.

25 THE COURT: All right. Do we need to wait

1 for the interpreter before we get started?

2 MR. GUZMAN: No, Your Honor. It is all
3 clear, your instructions.

4 THE COURT: All right.

5 Okay. Well, let me just let y'all know
6 the state of my knowledge.

7 I have reviewed the Application for Writ
8 of Habeas Corpus and the State's Answer to the
9 Application for Writ of Habeas Corpus, and
10 Mr. Schulman's appearance that was filed last night, I
11 think a little after 9:00. I saw a bunch of exhibits
12 got uploaded this morning. I have not reviewed all of
13 the exhibits. And to the extent there's anything else
14 in the file, I have not -- I have not seen it.

15 Sometimes things that get filed in the
16 District Clerk's Office have a lag time before they hit
17 our electronic file. So if there is anything new in
18 there, "new" meaning newer than the last couple of days,
19 then I haven't seen it, except for the two things y'all
20 uploaded last night and made me a recipient of when you
21 eFiled them. And that was the State's answer and the
22 appearance of Mr. Schulman.

23 All right. So, Mr. Schulman, I want to
24 hear your objections before we get started.

25 MR. SCHULMAN: Thank you, Your Honor.

1 I would point out, to begin with, that no
2 writ has issued in this case. Although Your Honor
3 signed a document purporting to be a writ, it does not
4 comply in any way, shape, or form with Article 11.01 of
5 the Code of Criminal Procedure; and that it is not an
6 order issued by a court or judge to someone having
7 confinement of the applicant.

8 Second, we object to the proceedings in
9 general today because --

10 MS. TAYLOR: Your Honor, may I object
11 briefly to Mr. Schulman's statement?

12 THE COURT: Let's let him finish his
13 statement, and then I'll hear from you, Ms. Taylor.

14 MS. TAYLOR: Thank you, Your Honor.

15 MR. SCHULMAN: We object to the
16 proceedings because pretrial writs pertain to people in
17 physical custody or under -- under a bond they cannot
18 afford. It's obvious that Mr. Guzman Curipoma is not in
19 physical custody nor has his presence been secured by
20 purpose of this writ. Those are our two primary
21 objections at this point.

22 The third objection is that we object to
23 the Travis County District Attorney purporting to
24 represent the State in these proceedings. This case has
25 nothing whatsoever to do with Travis County. And

1 although we are in a district court in Travis County and
2 the 53rd District Attorney is charged with representing
3 the State, the enabling statute, which I believe is
4 43.132, does not provide that the District Attorney is
5 the exclusive representative of the State. We believe
6 the Kinney County Attorney's Office is the proper
7 representative, and we would like to proceed as counsel
8 for the State.

9 *(Interpreter enters the proceedings)*

10 MR. SCHULMAN: Those are my three
11 objections at this point, Your Honor.

12 THE COURT: All right. So, two things.
13 One, I do want to hear from Ms. Taylor.

14 But, first, Ms. Leon has appeared. And so
15 were you going to have her interpret all of the
16 proceedings for Mr. Guzman Curipoma?

17 Yes?

18 MS. MIRÓ: Yes, Your Honor.

19 THE COURT: All right. So let me swear in
20 Ms. Leon.

21 *(Sofia Leon sworn as interpreter)*

22 THE INTERPRETER: I do. And for the
23 record, my name is Sofia Leon; and my license number is
24 119.

25 THE COURT: All right. And so will you go

1 ahead and get on the Spanish channel? And Mr. Guzman.

2 *(Discussion in Spanish between the*
3 *interpreter and the witness)*

4 THE COURT: So each of y'all -- you should
5 see at the bottom of your screen a little globe icon
6 with the word "Interpretation" below it. If you click
7 on that, if you want to hear the Spanish interpretation,
8 you click on Spanish. If you want to hear the English
9 interpretation, you click on English. Or -- I think you
10 can leave it off too. Is that right, Ms. Chipelo?

11 JUDICIAL EXECUTIVE ASSISTANT: I believe
12 so.

13 THE INTERPRETER: (Shakes head.)

14 THE COURT: Ms. Leon says no.

15 THE INTERPRETER: Everybody needs to
16 choose a language --

17 *(Simultaneous crosstalk)*

18 THE COURT: -- [Zoom audio difficulty] --

19 THE INTERPRETER: I am in the English
20 channel right now. Can you hear me?

21 THE COURT: Yes, I --

22 *(Simultaneous crosstalk)*

23 THE INTERPRETER: Okay. Everybody --

24 THE COURT: -- do --

25 THE INTERPRETER: -- needs to choose the

1 language.

2 THE COURT: All right. So everybody who
3 wants to hear English needs to be in the English
4 channel, and everyone who wants to hear Spanish should
5 be in the Spanish channel.

6 All right. Now that that is taken care
7 of, Ms. Taylor.

8 MS. TAYLOR: Thank you, Your Honor.

9 The Travis County District Attorney's
10 Office represents the State of Texas in criminal cases
11 in the district courts of Travis County. The Travis
12 County District Attorney's Office is tasked with this by
13 the Texas Legislature through Article 2.01 of the Code
14 of Criminal Procedure, and that provision provides that
15 the Travis County District Attorney, or a district
16 attorney for a district, shall represent the State in
17 all criminal cases in the district courts of his
18 district and in appeals therefrom, except in cases where
19 he has been, before his election, employed adversely.
20 My boss Mr. Garza, the District Attorney of Travis
21 County, has not been employed adversely with regard to
22 this matter.

23 That statute further provides that if the
24 district attorney is notified of a criminal proceeding
25 before a judge upon habeas corpus, and if he is, at the

1 time, within his district -- which Mr. Garza is; and we
2 were notified of this habeas corpus proceeding in this
3 Court -- it provides that he shall represent the State
4 therein unless prevented by other official duties.
5 Mr. Garza is not prevented by other official duties from
6 responding to this writ of habeas corpus in this Travis
7 County District Court.

8 The Court of Criminal Appeals has held
9 that the office of a district attorney is
10 constitutionally created and protected; thus the
11 district attorney's authority cannot be abridged or
12 taken away. And that's in the *Buntion* case, which is
13 cited in our answer 482 S.W.3d 58 at Page 76. Thus, the
14 Travis County District Attorney's Office is statutorily
15 mandated to respond to this Application for Writ of
16 Habeas Corpus in this Travis County District Court.
17 Travis County District Attorney's Office does not
18 purport to respond in Kinney County to the actual
19 criminal case at issue. We are -- but, however, we
20 believe that we are the appropriate state entity to
21 respond to this Application for Writ of Habeas Corpus in
22 this Travis County District Court.

23 That statute further provides in its most
24 famous language, It shall be the primary duty of all
25 prosecuting attorneys, including any special

1 prosecutors, not to convict but to see that justice is
2 done. And we take that obligation very seriously, and
3 we intend to follow that admonition in our litigation of
4 this writ of habeas corpus in this Travis County
5 District Court.

6 Thank you.

7 MR. SCHULMAN: May I respond?

8 THE COURT: Mr. Schulman, you may respond.

9 MR. SCHULMAN: Thank you, Your Honor.

10 First I would point out that this is not
11 the Travis County District Attorney at issue. He is the
12 district attorney for the 53rd Judicial District. That
13 office is charged with representing the State in all
14 criminal cases. This is not a criminal case. It's on
15 the civil docket. And it is, under the case law of the
16 Third Court of Appeals, a civil procedure separate and
17 distinct from any criminal proceeding. I can provide
18 that citation if Your Honor needs it.

19 That being the case, the District Attorney
20 is not statutorily or constitutionally charged as the
21 exclusive representative of the State in this
22 proceeding.

23 MS. COGLIANO: Judge, if I may respond, as
24 well.

25 THE COURT: You may.

1 MS. COGLIANO: On this particular issue --
2 and I'll address the issue of the writ when the Court
3 instructs me to -- but I just wanted to point out that
4 the Court of Criminal Appeals also ruled in *Alvarez v.*
5 *Eighth Court of Appeals*, which is 977 S.W.2d 590, that
6 the district attorney, unless disqualified, shall
7 represent the state of habeas corpus within this
8 district; and, provided that if the district attorney is
9 not present, then the Court may appoint any other party
10 to represent the State in habeas corpus litigation. But
11 that is only if the district attorney does not appear at
12 the setting and the writ was issued.

13 THE COURT: All right. Thank --

14 MS. TAYLOR: May --

15 THE COURT: -- you.

16 MS. TAYLOR: May I respond, Your Honor?
17 I'm sore to interrupt you.

18 THE COURT: You may, Ms. Taylor.

19 MS. TAYLOR: Your Honor, I think
20 Mr. Schulman's assertion that a writ of habeas corpus in
21 Texas is a civil proceeding is incorrect. I believe
22 that because the writ of habeas corpus is defined within
23 Chapter 11 of the Code of Criminal Procedure, in Texas a
24 writ of habeas corpus is not a civil proceeding as it
25 may be in other sovereigns' proceedings, but is not a

1 civil action but, in fact, is a criminal action. It is
2 a separate criminal action, I will concede, from the
3 case -- the actual criminal case; and thus, it is
4 docketed separately with a separate cause number. But
5 it is not a civil lawsuit. It is a criminal proceeding.
6 It is subsidiary or separate from the actual criminal
7 case which is in a separate judicial district.

8 Thus, the Travis County District
9 Attorney's Office would not purport to represent the
10 State of Texas in the misdemeanor proceedings in Kinney
11 County. However, this writ of habeas corpus is a
12 separate criminal proceeding. It was filed, as the
13 application states, pursuant to Chapter 11 of the Code
14 of Criminal Procedure and the Texas Constitution, in
15 this Court, and this Court issued the writ of habeas
16 corpus. That -- that discretionary decision has already
17 been made by this Court. And that was -- that is filed
18 in this particular court.

19 This Court, although it is by practice --
20 as I'm sure Your Honor is familiar, although it is by
21 practice a civil court and primarily considers civil
22 cases, I see no restriction in the Texas Code for this
23 Court's practice to civil cases. It seems to be a
24 court -- a district court of general jurisdiction. It
25 is, however, by practice primarily handle civil cases.

1 That does not mean that this Court is either statutorily
2 or constitutionally restricted to handling civil cases.

3 THE COURT: All right. Let me ask you to
4 address Mr. Schulman's point that the document that I
5 signed is not a writ that complies with Section 11.01 of
6 the Code of Criminal Procedure.

7 MS. TAYLOR: Your Honor, I think it is
8 absolutely a writ that complies with Section 11.01 of
9 the Code of Criminal Procedure. It is a court order
10 issued by a judge who signed it issuing -- I believe it
11 expressly states that it issues the writ of habeas
12 corpus.

13 Let me jump to that document. One moment.

14 Your Honor, I believe that it states that
15 the Application for Writ of Habeas Corpus has been duly
16 considered, and it is ordered that the application is
17 granted. Thus, it expressly grants the Application for
18 Writ of Habeas Corpus issuing the writ.

19 I believe Mr. Schulman's complaint that it
20 directs the Clerk to do something, that is customary --
21 as I'm sure the Court is familiar -- for the Court's
22 orders to direct the Clerk to take some action as a
23 result of the court order. So the Clerk of this Court
24 issue a writ of habeas corpus commanding the sheriff of
25 Kinney County to produce the person of Jesus Alberto

1 Guzman Curipoma either physically or if he has been
2 released on bond or recognizance and constructively
3 through his attorney.

4 So this --

5 *(Reporter admonition)*

6 MS. TAYLOR: I apologize.

7 So my understanding is that this document
8 provides that the writ of habeas corpus -- the
9 Application for Writ of Habeas Corpus has been duly
10 considered, and it is ordered that the application is
11 granted. It does direct the Clerk to take some action,
12 but I believe that is customary for court orders to do
13 this, and that is merely something that occurs as a
14 result of the Court issuing its order.

15 And the order also, as I understand it --
16 and I am looking at the proposed order at this time; so
17 if someone has the actual signed order in front of them,
18 that would be helpful -- but it directs, as I recall,
19 the Sheriff of Kinney County to produce the person of
20 Jesus Alberto Guzman Curipoma, either physically or if
21 he is or has been released on bond or recognizance, and
22 constructively through his attorney of record before
23 this Court for hearing in this Court on the legality of
24 the restraint as contested in the application.

25 So this -- this document is, in fact, an

1 order issued by this Court granting the Application for
2 a Writ of Habeas Corpus. As such, it satisfies the
3 requirements of Article 11.01 of the Code of Criminal
4 Procedure. That article provides the writ of habeas
5 corpus is the remedy to be used when any person is
6 restrained in his liberty. It is an order issued by a
7 court or judge of competent jurisdiction, which this
8 district court is, which is discussed in our answer. It
9 is directed to anyone having a person in his custody or
10 under his restraint.

11 This individual, the Sheriff of Kinney
12 County, has Mr. Guzman Curipoma under restraint because
13 he is being held on bond. And under the definition in
14 Article 11.22 and also in case law applying that
15 provision of the Code of Criminal Procedure, a person
16 who is released on bond is still subject to restraint.
17 They are restrained for purposes of Chapter 11 of the
18 Code of Criminal Procedure. And Article 11.01
19 continues, commanding him -- this would be the Sheriff
20 of Kinney County -- to produce such person at a time and
21 place named in the writ and to show why he is held in
22 custody or under restraint.

23 That is exactly what this court's order
24 does; therefore, it qualifies as a writ of habeas
25 corpus, and it has already been issued.

1 THE COURT: Thank you.

2 And I believe, Ms. Cogliano, you wanted to
3 speak to this, as well.

4 MS. COGLIANO: Yes, Judge. I believe
5 Ms. Taylor covered a lot of what I was going to say.

6 I did want to give the Court some
7 background on the language of the writ. It was
8 specifically chosen because it is the language that was
9 used in a writ that was issued in a Court of Criminal
10 Appeals case that ultimately decided that people that
11 are subject to the restraint, and therefore subject to
12 having to appear in court and answer to the charges
13 against them, can -- can have a claim cognizable
14 pretrial in a writ of habeas corpus.

15 And so I used the language specifically
16 from that order. And that writ in that case that did
17 require "constructively through the attorney of record
18 for the applicant to appear," and it was ruled that he
19 was actually in restraint -- was being restrained by the
20 State of Texas as is required by Article 11.22 of the
21 Code of Criminal Procedure.

22 THE COURT: All right.

23 Mr. Schulman, are you suggesting that
24 because -- well, first of all, do you know whether or
25 not the Clerk has issued a writ?

1 MR. SCHULMAN: As of late last night, no.
2 As of this morning, no.

3 But may I respond directly to the language
4 of the order itself?

5 THE COURT: Just a minute.

6 So is not the Clerk's issuance of a writ
7 at the -- at the requirement of a judge just a
8 ministerial act?

9 MR. SCHULMAN: Respectfully, Judge, I
10 would say, yes, it's a ministerial act. But it's still
11 not the action of the Court; it's an action by the
12 Clerk. And specifically, as the text Ms. Taylor read
13 requires, that the order is directed to anyone having a
14 person in his custody. Your order did not direct
15 anything at the Kinney County Sheriff. It ordered the
16 Clerk to do something.

17 And what I would say regarding as to the
18 form is that it may have been used in a case that the
19 Court of Criminal Appeals ruled on, has no affect on the
20 writ itself. The point is, the statute is very clear on
21 what a writ is. We're not talking about -- it's a
22 separate and distinct question of whether the person is
23 present or how they got present. But nothing in your
24 order directs the Sheriff of Kinney County to do
25 anything, nor -- nor does it impose on the Clerk the

1 authority to act for the Court, just to implicate --
2 excuse me, to get the process moving by issuing this.

3 But what I would say is the fact that
4 this -- the forms that are used in this county do
5 something is not important. For years we had a form in
6 the court directing the defendant to waive off ten days
7 before sentencing; and that was in the courts as much as
8 35 years after that stopped being the law. There has
9 never been a point in the Republic of Texas or the State
10 of Texas in which a writ was not an order by a court.

11 This is not an order by a court directed
12 to anyone having custody of the defendant. It is,
13 therefore, not a writ. The writ has not issued.

14 THE COURT: All --

15 *(Simultaneous crosstalk)*

16 MS. TAYLOR: Your Honor, I --

17 THE COURT: -- right. Ms. Taylor?

18 Yes.

19 MS. TAYLOR: Sorry.

20 Your Honor, I think this is exactly that.
21 It is exactly an order from this Court signed by this
22 judge directing a person -- directing a person, the
23 Sheriff of Kinney County, to produce the person of Jesus
24 Alberto Guzman Curipoma, either physically or, if he has
25 been released on bond or recognizance, then

1 constructively through his attorney of record before
2 this Court for a hearing in this Court. The Clerk is
3 merely an agent of this Court in the text of this order
4 and also in reality. The Clerk acts upon -- only upon
5 the direction of this Court.

6 THE COURT: All right.

7 So, Mr. Schulman, are you suggesting that
8 we need to delay this hearing until the Clerk issues the
9 writ of habeas corpus, or until this order is amended to
10 say that this Court is itself issuing a writ of habeas
11 corpus?

12 MR. SCHULMAN: No, Your Honor. What I'm
13 saying is, at this point, there is no writ. There is no
14 hearing. Not now, not if the Clerk issues that at all,
15 because I do not agree that the Clerk has the authority
16 to issue a writ of habeas corpus.

17 THE COURT: So is it, then, your
18 contention that the language of the writ that the Court
19 signs needs to direct the Sheriff of Kinney County to
20 produce the person and not to direct the Clerk to issue
21 a writ to the Sheriff?

22 MR. SCHULMAN: Absolutely.

23 THE COURT: All right. So an amended writ
24 of habeas corpus saying that would trigger a hearing
25 like this. Is that your -- your contention?

1 MR. SCHULMAN: I would agree with that
2 statement.

3 THE COURT: All right.

4 Is there a request that the Court sign an
5 amended writ?

6 MS. COGLIANO: Judge, if you give me five
7 minutes to modify the language in our proposed writ and
8 send it to you, the Court, I can do that very quickly.

9 MR. SCHULMAN: I would also suggest that
10 this will also have to be served on the Sheriff of
11 Kinney County.

12 THE COURT: Well, that's assuming that
13 Mr. Guzman Curipoma did not appear.

14 MR. SCHULMAN: I --

15 THE COURT: He has appeared.

16 MR. SCHULMAN: I would disagree, Your
17 Honor.

18 THE COURT: All right. Well, I think what
19 we'll do is we'll take a quick break to give
20 Ms. Cogliano a few minutes to prepare an amended writ
21 and perhaps to confer with her co-counsel.

22 And how long would you like, Ms. Cogliano?

23 MS. COGLIANO: Judge, if you could give me
24 15 minutes, I can be completely done by then.

25 THE COURT: All right. Well --

1 MS. TAYLOR: Judge, may I add one more
2 thing? Sorry.

3 THE COURT: Sure.

4 MS. TAYLOR: I just wanted to point out
5 that Article 11.01 states that it is an order issued by
6 a court or judge of competent jurisdiction directed to
7 anyone having a person in his custody or under his
8 restraint commanding him to produce such a person. That
9 does not say -- state "served upon."

10 MS. COGLIANO: And, Judge, I would point
11 out that his restraint is by virtue of documents filed
12 with the Clerk's Office in Kinney County. We are
13 alleging the restraint is arising out of the complaint
14 that was filed. The Court and the Clerk is the one
15 that's holding him in -- by illegal restraint by having
16 to respond to those allegations.

17 But all that being said, I want to make
18 clear I'm not waiving the position that that language is
19 superfluous. It's legal-ease that is in writs all over
20 the State. And this Court's intention and clear purpose
21 in signing the writ was in response to the Application
22 for Writ of Habeas Corpus, and it's titled Writ of
23 Habeas Corpus, and it is directing us to appear to
24 contest the legality of the restraint that our client's
25 experiencing right now.

1 THE COURT: All right. Well --

2 *(Simultaneous crosstalk)*

3 MR. SCHULMAN: Okay. Your Honor --

4 THE COURT: -- we will go ahead and break
5 for 15 minutes.

6 MR. SCHULMAN: -- may I say one more
7 thing?

8 THE COURT: Briefly.

9 MR. SCHULMAN: If you will grant us, in
10 essence, a running objection to the proceeding, then I
11 see no reason to go through the mechanism of having a
12 second document issued, et cetera. We can proceed right
13 now. I would agree to that --

14 THE COURT: Well, you -- you've made your
15 objection, and it appears that there is a way to fix
16 that problem, at least arguably. And rather than
17 spinning our wheels doing something that you find
18 objectionable, it seems like there ought to be an
19 opportunity to have a fix. So --

20 MR. SCHULMAN: Okay.

21 THE COURT: -- I understand you may not
22 agree that the fix that they are considering will
23 actually fix the problem --

24 MR. SCHULMAN: Well --

25 THE COURT: -- but.

1 MR. SCHULMAN: -- to -- sorry to
2 interrupt, Your Honor.

3 What I say is -- so I don't have to make
4 further objections later, I would tell the Court I don't
5 think what they propose to do fixes anything. It's --
6 we are not contesting in any way, shape, or form that
7 Mr. Guzman Curipoma is in custody. He certainly is in
8 custody by virtue of a personal bond as I understand it.

9 That notwithstanding, he is not in the
10 custody of the Clerk of this Court or of the Clerk --
11 District Clerk in Travis County nor of the County Clerk
12 in Kinney County. He is in the custody of the Sheriff
13 of Kinney County. And the fact that he's here doesn't
14 mean he was told to be here by the Sheriff in any way.

15 THE COURT: All right.

16 So it's 9:37. Let's go ahead and take a
17 break till about five minutes till 10:00.

18 Y'all are welcome to just turn off your
19 microphone and your cameras. And we will start back up
20 at 9:55.

21 MS. TAYLOR: Thank you, Your Honor.

22 *(Recess taken)*

23 THE COURT: All right. There's somebody
24 in the waiting room named Philip Wischkaemper.

25 MS. COGLIANO: Yes, Judge. He's our final

1 remaining witness that's going to be testifying as a
2 fact witness in the case.

3 THE COURT: All right. We will let him
4 in.

5 All right. So I see that you-all have
6 uploaded a new writ that orders the Sheriff to produce
7 the person of Jesus Alberto Guzman Curipoma.

8 So, Mr. Schulman --

9 MR. SCHULMAN: Yes, Your Honor.

10 THE COURT: -- is it your position that
11 until that is served on the Sheriff, this proceeding
12 should not go forward?

13 MR. SCHULMAN: Yes, Your Honor.

14 THE COURT: All right.

15 Well, I will tell you-all that I am the
16 duty judge this week, which means that I'm not burdened
17 with other hearings. I am here. I am available to go
18 forward now, or I am available to postpone the hearing
19 until you-all have had an opportunity to serve the
20 Sheriff, if that's the holdup. I don't want to get hung
21 up on a technicality. I do want to get to the merits of
22 this issue. And I'm going to give the Applicant the
23 option.

24 MS. COGLIANO: Judge, just to make my
25 record, I want to first -- I -- not trying to sound

1 ridiculous but object to the objection. Our position is
2 that Mr. Schulman is not a representative of the State
3 and, therefore, is not a party to this litigation and,
4 therefore, doesn't have the standing to be objecting to
5 the form or service of anything in this case.

6 I also want to point out that under 11.03
7 of the Code of Criminal Procedure, want of form of the
8 writ of habeas corpus is not ever dispositive. It
9 should never -- it says specifically the writ of habeas
10 corpus is not invalid nor shall it be disobeyed for any
11 want of form if it substantially appears that it's
12 issued by a competent authority, and the writ --

13 THE COURT: Ms. Cogliano?

14 MS. COGLIANO: Yes.

15 THE COURT: I see Ms. Williamson shaking
16 her head, which means you're speaking too quickly when
17 you're reading for her to be able to take down what
18 you're saying. So if --

19 *(Simultaneous crosstalk)*

20 MS. COGLIANO: I apologize --

21 THE COURT: -- you'll.

22 MS. COGLIANO: -- Ms. Williamson.

23 THE COURT: Sorry about that.

24 So if you'll start over and read it a bit
25 more slowly so she can make a record, that would be

1 great.

2 MS. COGLIANO: The writ of habeas corpus
3 is not invalid nor shall it be disobeyed for any want of
4 form if it substantially appears that it is issued by
5 competent authority and the writ sufficiently shows the
6 object of its issuance. And so that very clearly states
7 that any -- you know, a clerical error or a miswording
8 that is in the writ is never going to be dispositive if
9 it's clear what it directs. And it's obviously clear
10 what it directs because we are all here today to
11 litigate this issue, and we're all prepared today to
12 litigate this issue.

13 I also believe that by showing up and
14 being ready and present and announcing as we're ready
15 and present to proceed with the hearing, that the State
16 waives any objection to want of form or want of service.

17 And finally, Judge, I believe that the
18 original writ, which directs the Clerk to serve it on
19 the Sheriff, is the appropriate mechanism, just like in
20 a application for a subpoena. Here, it wouldn't be my
21 prerogative, it wouldn't be my authority to serve a
22 judicial order on the Clerk or the Sheriff of the other
23 county. I do -- Judge, I do believe there's other
24 mechanisms for that.

25 But I also believe that every party here

1 is aware of the writ, is ready to litigate the writ, and
2 thereby waives any sort of claim of lack of notice in
3 this matter.

4 THE COURT: All right. Well, let me ask
5 Ms. Taylor, on behalf of the State, whether she agrees
6 and waives any issues on the form of the writ.

7 MS. TAYLOR: Your Honor, I do. I agree
8 with what Ms. Cogliano just stated. And I do not have
9 any objections to the form of the writ. And as I stated
10 earlier, we were notified with the writ; we were served
11 with the writ; and we are here and present on behalf of
12 the State of Texas regarding this writ.

13 I would also note that I believe
14 Mr. Schulman stated earlier that a pretrial writ was not
15 available for someone who was not in custody. Pretrial
16 writs are traditionally and it is not infrequent that
17 they are filed to allege constitutional claims such as
18 this on behalf of people who are not in custody, who
19 are, in fact, released on some type of bond. And one of
20 the most famous ones of those is involved in a case
21 which is cited in the Application for Writ of Habeas
22 Corpus and also in the State's answer and is probably
23 the preeminent authority at this time from the Court of
24 Criminal Appeals regarding pretrial writs and chal- --
25 and constitutional challenges brought within those

1 writs, and that is *Ex Parte Perry*, which is 41 S.W.3d 63
2 and involves an Application for Writ of Habeas Corpus
3 filed by former Governor Rick Perry. And that writ
4 raised separation of powers claims. And in that
5 opinion, the Court further cites -- and I believe this
6 may be in the -- what I'm citing to you right now,
7 incidentally, is the Austin Court of Appeals opinion
8 which led to the petition for discretionary review by
9 the Court of Criminal Appeals and the opinion that is --
10 that has become authority for the State on pretrial
11 writs.

12 But the Austin Court of Appeals' decision
13 is the one that discusses the issue of restraint or
14 confinement. Very briefly and it just says there has
15 been no dispute that Governor Perry is restrained in the
16 sense required for pretrial habeas relief pursuant to
17 each of the two charges alleged in the indictment. And
18 it's a citation to the *Weise* case, W-e-i-s-e, from the
19 Court of Criminal Appeals, observing that pretrial
20 habeas applicant was restrained of his liberty when he
21 was charged with an offense and released on bond to
22 await trial.

23 THE COURT: All right. Thank you.

24 Well, I do have some questions about
25 Mr. Schulman's place in this litigation. Are you --

1 *(Brief interruption)*

2 *(Discussion off the record)*

3 THE COURT: So, Mr. Schulman, are you
4 representing the Sheriff of Kinney County or --

5 MR. SCHULMAN: No --

6 THE COURT: -- who are you --

7 MR. SCHULMAN: -- I am acting under oath
8 as an acting Assistant County Attorney in Kinney County.
9 And what I would point out to you, Your Honor, is that
10 when the writ was -- writ application was filed
11 initially, the local district attorney was not served.
12 The county attorney was served, County Attorney of
13 Kinney County was served.

14 And whether -- whether Your Honor
15 ultimately decides that the Kinney County Attorney
16 should represent the State or the 53rd District Attorney
17 should represent the State, the Kinney County is --
18 Kinney County Attorney is a real party in interest to
19 this litigation because they were the ones first served
20 with it and it -- under their auspices that the
21 defendant is being prosecuted.

22 MS. COGLIANO: Judge, to clarify, both of
23 the representatives of the State that are claiming to be
24 the representatives of the State here were served on
25 every filing in every way. I believe the very first

1 application that I filed I emailed it to the District
2 Attorney's Office service email and to Holly and to the
3 First Assistant of the District Attorney's office
4 because I hadn't served them officially through the
5 eFile system.

6 And then every subsequent writ after that
7 and every filing after that I included any party that I
8 thought may want to have notice of this hearing to avoid
9 any issue like this. Me serving somebody with a
10 document does not establish their jurisdiction or their
11 authority to litigate against me. It just means I am
12 providing notice to any party that may have an -- may
13 have an opinion on what's going on in the case, and I
14 didn't want to leave anybody out.

15 THE COURT: All right.

16 Well, here's what I'm going to do.
17 Although I am persuaded that the Travis County District
18 Attorney has the authority to represent the State in
19 this matter, I am going to allow Mr. Schulman to speak
20 on behalf of the Kinney County Attorney's Office. I
21 think that that will avoid the necessity of a remand if,
22 in fact, there's some question about who represents the
23 State.

24 I have read the State's answer to the
25 Application for Writ of Habeas Corpus, as I acknowledged

1 earlier, and I do see that the Travis County District
2 Attorney Office on behalf of the State, in essence, says
3 in their prayer, The State is compelled to pray that
4 this Court find that Applicant has met his burden of
5 proof and is entitled to relief.

6 And so that 32-page pleading that the
7 State has filed, with multiple attachments, is quite
8 persuasive. The application itself is, as well. And so
9 it does seem as though, to the extent that there is
10 anyone on the other side of the Applicant in this
11 hearing today, it would be Mr. Schulman and the Kinney
12 County Attorney's Office. And although, as I say, I'm
13 skeptical about their authority to continue, I am
14 willing to hear them out because I don't want to get
15 hung up on technical issues. I want to get to the
16 merits of the matter, and I want to do that today.

17 So let's go ahead. I am overruling the
18 objections to the form of the writ. I am signing this
19 writ that you-all have provided today that is, in
20 essence, the Second Amended Writ of Habeas Corpus that
21 commands Mr. Guzman Curipoma to appear here virtually
22 today at this hearing, which, of course, he has
23 appeared, as has Mr. Schulman and the lawyers in the
24 DA's office on behalf of the State.

25 So, that said, let's get into the heart of

1 the issue. Ms. --

2 MS. TAYLOR: Your Honor, may I briefly
3 just -- I -- we totally respect the Court's ruling. But
4 may I lodge, effectively, a running objection to any
5 other entity representing the State of Texas in Travis
6 County District Court?

7 THE COURT: Yes.

8 And let me -- let me just say that I
9 sustain that objection. But in the interest of what is,
10 I guess, in essence, a bill, I will allow Mr. Schulman
11 to make his points. We do have set aside from now till
12 noon. Generally, we say that each side gets half of the
13 time. It does appear that the DA's office, the State,
14 is on the side of Mr. Guzman Curipoma. So I am going to
15 essentially say that you-all have an hour and
16 Mr. Schulman has an hour. Mr. Beck will keep track of
17 the time. And let's go ahead and proceed.

18 But your objection is sustained. But then
19 for the purpose of a writ, we will -- I mean, of a bill,
20 we will go ahead.

21 Ms. Cogliano.

22 MS. COGLIANO: Judge, and if I could, I
23 was going to make the same request for a running
24 objection as Ms. Taylor did for the purposes of the
25 record on behalf of Mr. Guzman Curipoma.

1 THE COURT: Yes. Your objection is
2 sustained, and your running objection is allowed. But
3 for the purpose of the record, we are going to let
4 Mr. Schulman make his argument.

5 MS. COGLIANO: Understood, Judge.

6 And before I begin my presentation of
7 evidence, Judge, I was hoping we could discuss how you
8 would like that to proceed, considering that the rules
9 of evidence don't apply in this case. I have some
10 witnesses to present testimony, and what I'd like to do
11 is offer my exhibits as they testify. And then let
12 Ms. Taylor and Mr. Schulman lodge whatever objections
13 they would at that time. But they are not being
14 authenticated necessarily by those witnesses. It's just
15 the mechanism that I would request the Court allow me to
16 present those exhibits.

17 THE COURT: All right. That's fine.

18 You may call your first witness then.

19 MS. COGLIANO: Judge, may I give a brief
20 opening statement?

21 THE COURT: You may.

22 **OPENING STATEMENT**

23 MS. COGLIANO: Judge, we're here today
24 because the State of Texas has implemented a
25 prosecutorial scheme at the border that creates a

1 separate and distinct criminal justice system solely
2 reserved for people who the authorities over -- over
3 Operation Lone Star believe to have unlawful status here
4 in the United States.

5 Under federal law, state actors do not
6 have the authority to make determinations about
7 someone's legal immigration status, nor can they run
8 afoul of the intent and the explicit directives of
9 federal immigration law. Federal court -- federal law
10 is the exclusive jurisdiction of immigration law, and it
11 provides very clearly in the INS ways that the state
12 actors can assist in that and help with the prosecution
13 and the control of immigration in the respective states.
14 But the procedures are laid out, and this is absolutely
15 not one of those procedures.

16 And so we are going to -- we present five
17 grounds of preemption that we believe make Operation
18 Lone Star and the application of it to the prosecution
19 of my client Jesus Guzman Curipoma unconstitutional.

20 And so our first witness that we're going
21 to call is Ms. Kathryn Dyer. And my co-counsel Addy
22 Miró is going to take her as a witness.

23 THE COURT: All right. Ms. Dyer. Will
24 you raise your right hand and be sworn, please?

25 **KATHRYN DYER,**

1 having been first duly sworn, testified as follows:

2 **DIRECT EXAMINATION**

3 BY MS. MIRÓ:

4 Q. Good morning, Ms. Dyer.

5 A. Good morning.

6 Q. Can you hear me okay?

7 A. Yes.

8 THE COURT: You're a bit muffled. You
9 might need to get a little closer to your microphone.

10 MS. MIRÓ: Okay. Is that better?

11 THE COURT: Keep an eye on the court
12 reporter, please. She'll shake her head no if at any
13 point she's unable to hear you.

14 MS. MIRÓ: I will, Your Honor.

15 Q. (By Ms. Miró) Ms. Dyer, can you please give us
16 your full name for the record.

17 A. Sure. Kathryn Dyer. It's K-a-t-h-r-y-n, last
18 name D-y-e-r.

19 Q. Ms. Dyer, what is your profession?

20 A. I am a criminal defense attorney and a clinical
21 professor at the University of Texas School of Law.

22 Q. And how long have you been practicing criminal
23 law?

24 A. Twelve years.

25 Q. In your 12 years of practice, about how many

1 people have you represented?

2 A. I have represented hundreds of people as a
3 public defender, definitely more than a thousand.

4 Q. And how long have you been a clinical professor
5 with the UT Law School?

6 A. Four years.

7 Q. And as a clinical professor, what's your role?

8 A. At the University of Texas, I work in a
9 criminal defense clinic. It is a practical component of
10 legal education where I teach and supervise law students
11 who represent individuals charged with crimes in Travis
12 County.

13 Q. Ms. Dyer, are you familiar with Operation Lone
14 Star?

15 A. Yes, I am.

16 Q. And how are you familiar with Operation Lone
17 Star?

18 A. I learned about Operation Lone Star in July of
19 2021. I have traveled to one of the state prison
20 facilities that detains people charged under Operation
21 Lone Star. I have traveled to Val Verde and Kinney
22 Counties to try to obtain information about the program
23 and, in particular, about individuals who I learned were
24 arrested pursuant to the program. [Zoom audio
25 difficulty] -- get other information about the

1 charges -- [Zoom audio difficulty] -- their whereabouts.
2 I have participated --

3 THE COURT: Hang on a --

4 MS. MIRÓ: I'm sorry, Ms. Dyer.

5 THE WITNESS: Sure.

6 THE COURT: Hang on.

7 If y'all will -- anybody who's speaking
8 just keep one eye on Ms. Williamson. She will either
9 waive her hand or shake her head if she can't get you.
10 You are breaking up a bit, Ms. Dyer, and
11 I'm not sure why that is. It may be that you're not
12 close enough to the microphone.

13 THE WITNESS: Okay.

14 THE COURT: So let's try it again.

15 THE WITNESS: Sure.

16 THE COURT: I think you were just saying,
17 when you broke up, that you had traveled to Kennedy
18 [sic] County and -- I'm sure there was another county
19 there. I can't remember what, though.

20 THE WITNESS: Sure.

21 A. I have been to Val Verde County and Kinney
22 County to their clerk's offices and courts. I have
23 represented individuals charged under Operation Lone
24 Star and have participated in proceedings.

25 Q. (By Ms. Miró) When did you first travel to

1 Kinney County and Val Verde County?

2 A. I first traveled to them in July of 2021 and
3 then again in August of 2021. I first went to the
4 Briscoe Unit, which is one of the state jail facilities
5 holding people, back at the end of July to observe
6 conditions. At that time, we didn't know if there were
7 ten people being housed there or -- in prison there or a
8 thousand people. And we couldn't get the names of
9 people imprisoned there, so we weren't able to talk with
10 people or observe the conditions.

11 Q. How would you describe the criminal legal
12 system that you observed as you have familiarized
13 yourself in Operation Lone Star?

14 A. I would describe it as a completely separate
15 and unequal legal system for those suspected of being
16 noncitizens and charged with the minor charge of
17 criminal trespass.

18 Q. What were you saying, that -- can you explain
19 more about what separates those charged within Operation
20 Lone Star from those charged with crimes in general,
21 from your experience?

22 A. Yeah. Yes.

23 So the people that we've seen charged
24 under Operation Lone Star or arrested are typically
25 happening by DPS troopers rather than local law

1 enforcement. They are diverted into completely separate
2 court proceedings starting from a different location
3 where magistration happens. It's happening in a tent in
4 Val Verde County with a set of separate judges holding
5 separate court proceedings from anybody else who is
6 arrested in those counties.

7 People who are suspected of being
8 noncitizens are kept in this separate state prison
9 facility, which is unprecedented. It's concerning
10 because the state jail facilities do not have to adhere
11 to the same procedures as county jails. These
12 facilities are hundreds of miles away from where the
13 supposed crime occurred, where those courts are set; and
14 there are separate, nonlocal attorneys being appointed
15 to represent people. Those appointments are happening
16 at a delayed, very slow rate because there are not
17 enough attorneys to take those cases.

18 But the bigger problem is that these
19 attorneys are all over the state of Texas. So they're
20 not able to meet with the clients that are being, again,
21 held hundreds of miles away from the court proceedings.
22 They are not able to go pop over and get information to
23 assist in the defense. The lawyers can't easily
24 investigate defense claims because they're not located
25 where these accusations happened. There are language

1 barriers and shortages of interpreters, and lawyers
2 can't confer with their clients easily during any court
3 proceedings that happen because they're in different
4 locations.

5 So despite building this very separate
6 system, the delays that are happening for these clients
7 that are charged under Operation Lone Star are resulting
8 in far longer periods of pretrial detention and people
9 not having court dates for 40, 50, 60, 90 days after
10 their arrest.

11 Q. What did you learn about the appointment
12 process when you were there -- that attorneys were being
13 appointed or not? What did you learn about that?

14 A. Sure.

15 So the reason why I started looking at the
16 court appointment process was that we had learned
17 through a hotline through a grassroots organization
18 called Grassroots Leadership that there are people being
19 detained since July. And this was in August. So being
20 detained for almost a month with no attorney and no
21 court date. And it was extremely difficult to find
22 information about these individuals.

23 Again, their family members had reached
24 out, and I couldn't -- I would call the Kinney County
25 Clerk, the County Attorney, the JP, and ask, you know,

1 what's the status of these cases. And they would say,
2 We have no information about the names that you've
3 given. And so I was really concerned that these folks
4 had not gotten lawyers. And so I went personally to
5 Kinney County to kind of demand more information about
6 the individuals that we knew were in custody.

7 While I was there, I learned that
8 routinely -- and I think probably every time -- that the
9 Kinney County judge and JP were magistrating people
10 using pre-filled forms in English. So they would say
11 something, they would have a deputy translate it, and
12 then they would, at the end of their magistration, say,
13 you know, we need you to sign this form saying that
14 we've told you your rights. Again, that form is in
15 English. It was not translated. And there was a box
16 that was pre-filled out and pre-checked that said that
17 the individual declined to request an attorney.

18 So I personally observed the judge have
19 somebody sign this pre-filled form and not offer to give
20 them an attorney.

21 Q. Okay. So did you have an opportunity to
22 observe the processing center -- and these are the
23 tents -- that you mentioned earlier?

24 A. Yes. In late July of 2021, I did get a tour of
25 the tent facility, and I was able to watch individuals

1 being magistrated in that first appearance via video
2 stream at the Sheriff's Department.

3 Q. Can you describe what you saw --

4 *(Simultaneous crosstalk)*

5 A. Yes.

6 Q. (By Ms. Miró) -- the tent and what it looks like
7 inside?

8 A. Yes.

9 So the tent facility included -- there is
10 some form of air-conditioning unit, but it was a bunch
11 of cages with fences. There were no -- there was a kind
12 of cement floor. There were no beds. There were no
13 chairs. There was a phone where you can't pick up the
14 phone but you can lean in and talk into it. And there
15 were a number of officials -- all different kinds of
16 officials -- Texas National Guard, DPS troopers, Texas
17 Emergency Management Department, Galveston Sheriff's
18 administrators -- all kind of working in this tent. And
19 I saw people in jumpsuits being guided around.

20 Q. And I believe you mentioned that the
21 translation was done by a DPS trooper. Did I hear that
22 correctly?

23 A. The magistration that I saw in Kinney County
24 was done by a sheriff's deputy. In Val Verde County,
25 the interpretation is done via Zoom. So -- so a person

1 would be taken to a trailer outside of the tent and sat
2 in a chair with a camera on them, and then the
3 magistrate judge would be in a different location,
4 mostly their homes. And the interpreter would be in a
5 different location. And everything was done via Zoom.

6 Q. Ms. Dyer, you actually represent several
7 clients that were arrested under Operation Lone Star,
8 correct?

9 A. Yes.

10 Q. And so two of those clients are Ivan Ruano
11 Nava -- Ivan --

12 *(Reporter clarification)*

13 MS. MIRÓ: I'll repeat.

14 Q. (By Ms. Miró) Did you represent two clients:
15 One by the name of Ivan Ruano -- that's R-u-a-n-o --
16 Nava, N-a-v-a, and the other client --

17 A. Yes.

18 Q. -- David -- David Muñoz, M-u-n-o-z?

19 A. Yes.

20 *(Reporter clarification)*

21 MS. MIRÓ: David Muñoz, M-u-n-o-z.

22 Q. (By Ms. Miró) And those two clients were
23 detained at the Dolph Briscoe Unit; is that correct?

24 A. Yes.

25 Q. What is the Dolph Briscoe Unit? Is that one of

1 the facilities that you had described earlier?

2 A. Yes. The Dolph Briscoe Unit is located in
3 Dilley, Texas. It's about a hundred and, I think, 80
4 miles from the County Seat in Kinney County. It's about
5 three hours away. And that's -- it was a state prison
6 facility that was re-purposed for housing people that
7 were charged under Operation Lone Star.

8 Q. Was there a court date set for either client
9 soon after they were arrested?

10 A. A court date was never set for them until
11 co-counsel that I was working with on this case
12 repeatedly called to try to get an initial appearance.
13 And so those calls started in late August or early
14 September; and these two people had been arrested in
15 July, I think, July 25th of 2021.

16 Q. Did you ever try to reach out to the
17 prosecutors in those cases?

18 A. Yes, I did.

19 Q. Did you get an answer?

20 A. I was not able to communicate about these cases
21 with the prosecutor or to engage in any negotiation.
22 And the same was true for my co-counsel.

23 Q. So when it comes to these two particular
24 clients, how was your experience different as far as
25 navigating the court system and negotiating with

1 prosecutors from your regular criminal cases that you
2 represent?

3 A. It was nothing like anything I had experienced
4 as a criminal defense lawyer who has practiced in
5 multiple courts in multiple jurisdictions. Finding the
6 arrest paperwork involved multiple phone calls that did
7 not give me any information. I did have to ultimately
8 drive down there to try to find any documentation that
9 they had even been arrested.

10 So multiple calls to the Clerk's Office,
11 the County Attorney's Office went unanswered. You know,
12 calls and emails went unanswered even after we had filed
13 a writ of habeas corpus. Even getting a hearing date to
14 be heard on that took weeks. And what was particularly
15 troubling was that it was an emergency filing; that
16 these clients were entitled to immediate release under
17 Texas law; that the prosecutor had not filed the proper
18 paperwork to pursue charges. So it was truly an
19 emergency, and yet I couldn't get anybody on the phone
20 or to put the case on the calendar.

21 So the number of delays and the amount
22 that that system has been overwhelmed has resulted in
23 days, weeks, and months of people being incarcerated and
24 these clients, in particular, being detained longer than
25 they should have been with these kinds of charges and

1 the procedural posture they were in.

2 Q. You were eventually heard on these cases,
3 correct, on September the 28th?

4 A. Yes.

5 Q. Okay. And what happened at that hearing?

6 A. During the course of that hearing, the
7 prosecutors announced that they were going to dismiss
8 the charges against these two individuals.

9 Q. And do you know -- do you remember why?

10 A. Yes. So we had --

11 MR. SCHULMAN: Objection. Your Honor,
12 that calls for a statement -- an answer that's without
13 her personal knowledge.

14 MS. MIRÓ: Your Honor, the reason for the
15 dismissal was stated on the record, I would assume. And
16 she --

17 THE COURT: All right. I'll allow her to
18 give her understanding of the reason.

19 A. We had raised a number of constitutional issues
20 that the prosecutors had hoped for more time on. When
21 we moved to the subject of whether there was probable
22 cause for the arrest of my clients, the prosecutors was
23 unable to produce evidence that amounted to probable
24 cause for the arrest. And, at that point, they moved to
25 dismiss the cases.

1 Q. (By Ms. Miró) And when were the cases dismissed?
2 When were the dismissals signed?

3 A. Yes.

4 So they orally moved to dismiss at
5 approximately noon on September 28th. The dismissals
6 were signed and filed with the County Clerk -- or the
7 Kinney County Clerk at around 1:30, 1:45 that same day,
8 that Tuesday, September 28th.

9 Q. Were the clients released that day?

10 A. They were not released that day.

11 Q. Were your clients released the next day?

12 A. They were not released the next day.

13 Q. And is -- that was a Wednesday.

14 A. That was Wednesday.

15 Q. On Thursday, what did you do?

16 A. On Thursday at approximately 3:00 p.m., we
17 notified the warden of the Briscoe Unit, Maria Ramirez,
18 that the cases had been dismissed more than 48 hours
19 prior; that any detainers had run out, and that our
20 clients needed to be released.

21 Q. How did you notify her? Was there a letter
22 that was sent?

23 A. Yes. My co-counsel Kevin Herrera sent a letter
24 to the warden at approximately 3:00 p.m. that day
25 outlining the reasons why we were demanding their

1 release.

2 MS. MIRÓ: And, Your Honor, at this time
3 we would like to introduce Exhibit W, the demand letter
4 that was sent. I can share my screen briefly.

5 Q. (By Ms. Miró) Ms. Dyer, can you see my screen?

6 A. Yes.

7 Q. Is that the letter that was sent to Warden
8 Ramirez?

9 A. Yes, it was.

10 Q. Okay. And I don't want you to read it all, but
11 can you tell us a summary of it?

12 A. Yes.

13 In short, it describes what I just
14 described, that there was a hearing on September 28th;
15 that a dismissal had been filed with the Court; that
16 more than 48 hours had run. And then it goes through
17 and explains what the 48 hours means in terms of ICE
18 detainers and indicates that the ICE detainer request
19 had expired.

20 Q. Okay. Can you explain what you mean by the
21 48-hour requirement?

22 A. Yes.

23 THE COURT: Let me just ask. Are you --
24 Hang on just a minute.
25 Are you offering --

1 MS. MIRÓ: Yes --

2 THE COURT: -- this exhibit?

3 MS. MIRÓ: Yes, Your Honor, I'm offering
4 it.

5 THE COURT: And the number is?

6 MS. MIRÓ: W. We have them by letters.

7 THE COURT: All right.

8 MS. TAYLOR: Your Honor --

9 MR. SCHULMAN: May I make --

10 MS. TAYLOR: -- the State has no --

11 MR. SCHULMAN: -- a request?

12 MS. TAYLOR: -- objection to that exhibit.

13 MR. SCHULMAN: May I make a request?

14 *(Reporter admonition)*

15 MR. SCHULMAN: May I make a request,
16 please?

17 THE COURT: You may.

18 MR. SCHULMAN: I understood these were
19 circulated yesterday, but I did not receive copies of
20 these exhibits. Could someone send those to me by
21 email?

22 THE COURT: They've been uploaded to Box.
23 You should have access to Box. Do you, Mr. Schulman?

24 MR. SCHULMAN: I do not, and I do not
25 access cloud -- [Zoom audio difficulty] --

1 THE COURT: Well, this is the Court's
2 mechanism that we use for documents that are offered
3 or -- to be offered into evidence.

4 So this is in --

5 MS. MIRÓ: Your Honor?

6 THE COURT: -- the exhibits that you-all
7 uploaded to Box? And it's Exhibit W --

8 MS. MIRÓ: Yes.

9 THE COURT: -- that's in Box under, I
10 believe it's Defendant's Uploaded Exhibits is where it's
11 sitting. Is it really Applicant's Uploaded Exhibits?

12 MS. MIRÓ: Yes.

13 MS. COGLIANO: Yes, Judge. And I -- Holly
14 and I meant to address this before the hearing, that
15 when I went to upload them into the Plaintiff's Box, I
16 think there was some confusion because prosecutor and
17 plaintiff. And so we kind of switched -- I switched
18 boxes instead of having to take all of her exhibits out.

19 So, yes, all of the Defendant's Exhibits
20 are our exhibits.

21 THE COURT: All right. So we'll re-label
22 those Applicant's Exhibits. And so Applicant's
23 Exhibit W has been offered.

24 Do you want to go ahead and share your
25 screen again so Mr. Schulman can see that?

1 MS. MIRÓ: Yes, Your Honor.

2 MS. TAYLOR: And, Your Honor, to make it
3 clear, the State has no objection to Applicant's
4 Exhibit W.

5 MS. MIRÓ: Mr. Schulman, do you -- we can
6 email you this one in particular. I don't know that we
7 can email you the whole set of exhibits because it's
8 going to be too large.

9 MR. SCHULMAN: Okay.

10 THE COURT: All right. So the --
11 Applicant's Exhibit W has been offered. The State has
12 no objection.

13 Mr. Schulman, do you object to Applicant's
14 Exhibit W?

15 MR. SCHULMAN: Your Honor, what I -- what
16 I would suggest to the Court is that, the Rules of
17 Evidence notwithstanding, none of this has any relevance
18 to constitutionality of the Governor's program, nor does
19 it have anything to do with the arrest of the Applicant
20 or the proceedings in the Applicant's case.

21 MS. MIRÓ: Your Honor, if you will see --

22 THE COURT: So -- so to the extent that
23 the objection is to the relevance of this document, that
24 objection is overruled.

25 Do you have any other objection,

1 Mr. Schulman?

2 MR. SCHULMAN: No, Your Honor.

3 THE COURT: All right. So Applicant's
4 Exhibit W is admitted.

5 MS. MIRÓ: Thank you, Your Honor.

6 Q. (By Ms. Miró) Ms. Dyer, we were talking about
7 the 48-hour rule that you mentioned -- mentioned in the
8 letter. Can you explain what that is?

9 A. Yes. And I will preface this with -- I am a
10 criminal defense lawyer and not an immigration lawyer,
11 but I have experienced ICE detainers with many clients.

12 Essentially, under the Code of Federal
13 Regulations, there is a period not to exceed 40 hours --
14 48 hours, excuse me, where local authorities can
15 continue to detain somebody beyond when they would
16 normally have been released for the purposes of
17 immigration to investigate citizenship or immigration
18 status and potentially take somebody into ICE custody.
19 But it is a detainer that is lodged with the local
20 authority and states very clearly on it that the time
21 period is not to exceed 48 hours from the time period --
22 from the time that they would have otherwise been
23 released.

24 Q. And that is excluding weekends and holidays,
25 correct?

1 A. Yes.

2 Q. So what were you told about the 48-hour period
3 when you inquired with the warden at Briscoe?

4 A. Yes.

5 So we did not receive a response from the
6 letter that we sent. And so the next day, on Friday,
7 October 1st, I went to the Briscoe Unit to speak with
8 Warden Ramirez and to advocate for our clients' release
9 since their case had been dismissed, you know, Tuesday
10 of that week. When I met with Warden Ramirez, she
11 indicated she had never heard of a 48-hour time limit on
12 a ICE detainer and insisted that no matter how much time
13 had passed, she had to contact ICE. And it didn't
14 matter to her how long the cases had been dismissed.
15 She said that it was her agency's position not to
16 release anybody from the Briscoe Unit and that it was
17 their policy to transfer everybody either to ICE custody
18 or the Val Verde processing center where the tent was
19 where the magistration occurred.

20 Q. So after receiving that answer, what did you
21 do?

22 A. I spoke with the court coordinator of the judge
23 that had heard our writ of habeas corpus who had been
24 there when the prosecution moved to dismissed case.
25 Co-counsel and I asked that judge to sign an order

1 asking for the immediate release of Mr. Ruano Nava and
2 Mr. Muñoz, given that their cases had been dismissed.
3 And I asked them to email me and the warden and other
4 parties that order.

5 Q. Was that order immediately followed?

6 A. That order was not immediately followed. What
7 ended up happening is that they -- ultimately, they were
8 supposed to be released to me at the Briscoe Unit in
9 Dilley, Texas. Ultimately, they were transferred by the
10 Texas Department of Criminal Justice and the Department
11 of Public Safety to Val Verde County to Customs and
12 Border Patrol. So not to the processing unit -- not to
13 the Val Verde processing unit. They were not released
14 directly from the facility as the judge had ordered.
15 Instead, they were taken to immigration, to CBP.

16 Q. So, to be clear, ICE did not come to Briscoe to
17 pick them up. Nobody from the federal government come
18 to pick them up. They were actually transferred by
19 people from the State; is that correct?

20 A. That -- that's correct. In fact, ICE,
21 Immigration and Customs Enforcement, had lifted the
22 detainer on the two of them. So they had indicated that
23 they were not enforcing the detainer, and they would not
24 be asking to transport these two individuals.

25 Q. Okay. And it is my understanding that you have

1 a motion for contempt pending on this issue; is that
2 right?

3 A. Yes. We filed a motion seeking a finding of
4 contempt for disobeying the court's order on October 1st
5 of 2021.

6 Q. And that is still pending, right?

7 A. That is still pending.

8 Q. But you did take some testimony recently.

9 A. Yes. I think it was December 13th, we started
10 the contempt proceedings, and we did obtain testimony
11 from Sheriff Brad Coe of Kinney County.

12 Q. Okay. And is there a transcript of that
13 testimony?

14 A. Yes. We have a transcript of the entire
15 hearing, including Sheriff Coe's testimony.

16 MS. MIRÓ: And, Your Honor, at this time,
17 we would like to offer Applicant's Exhibit Q, and that
18 is excerpts from that transcript. They are uploaded
19 into Box.

20 THE COURT: Is there any objection to
21 Applicant's Exhibit Q?

22 MS. TAYLOR: The State has no objection,
23 Your Honor.

24 MR. SCHULMAN: I would again object as to
25 the relevance of the exhibit.

1 THE COURT: All right. Well, the Court is
2 going to make a decision about what's relevant and
3 what's not at the end. And there's no jury to prejudice
4 by irrelevant information.

5 So I will overrule that objection; and
6 Applicant's Exhibit Q is admitted.

7 MS. MIRÓ: Thank you, Your Honor.

8 Q. (By Ms. Miró) Ms. Dyer, what did Sheriff Coe say
9 about notifying ICE during your hearing?

10 A. He said a few things. But he did indicate that
11 he would try to contact ICE, and he would hold people
12 from five to ten to twelve days, or as long as ICE asked
13 for people to be hold -- be held. And he also indicated
14 that if somebody doesn't have an ICE detainer or if an
15 ICE -- if ICE did not act on the detainer, that he would
16 contact ICE again to see if there was a mixup or if they
17 wanted the person or if they were never informed. That
18 if they indicated at that point that they would put an
19 ICE detainer on it, that he would honor any request from
20 ICE, which is obviously the opposite of what the federal
21 law requires.

22 Q. So -- and as an experienced attorney and
23 professor, would you say that the procedure you
24 described is a correct implementation of federal law
25 regarding ICE holds? I think you said no.

1 A. Absolutely not. He absolutely is violating
2 federal law by holding people for more than the 48 hours
3 that is dictated by federal law.

4 Q. And you mentioned that you had clients with ICE
5 holds before in other counties. Have you ever
6 experienced anything like this in your career before?

7 A. Never. There are times when a jail facility
8 might not know that the ICE detainer has run; and when
9 they are informed of that, they act immediately.

10 Q. Okay. But that didn't happen in this case.

11 A. That did not happen here.

12 Q. Okay.

13 MS. MIRÓ: At this time, I would pass the
14 witness.

15 THE COURT: All right.

16 Ms. Taylor or Ms. Nicolas, do you-all have
17 any questions for this witness?

18 MS. TAYLOR: I just have a few questions,
19 Your Honor.

20 THE COURT: All right. You may proceed.

21 **CROSS-EXAMINATION**

22 BY MS. TAYLOR:

23 Q. Thank you for being here, Professor.

24 Can I ask you a little bit about the
25 charges that were brought against these clients? What

1 were they charged with?

2 A. They were charged with misdemeanor criminal
3 trespass. They were charged with trespass on
4 agricultural land, which is a Class C misdemeanor. And
5 pursuant to the Governor's disaster declaration, that
6 was enhanced to a Class B misdemeanor.

7 Q. Okay. You talked about the Governor's disaster
8 declaration -- well, first of all, let me back up a
9 little bit.

10 Can you tell us a little bit about a
11 Class C misdemeanor? What are some other Class C
12 misdemeanors that ordinary folks might encounter in
13 their lives?

14 A. Yes.

15 Basic traffic infractions are Class C
16 misdemeanors. Very minor theft is a Class C
17 misdemeanor. It's the least serious charge that exists
18 in the state of Texas, and it carries no jail time. It
19 is only punishable by a fine up to \$500.

20 Q. Okay. Thank you very much.

21 So, like, if you're caught for speeding,
22 an ordinary --

23 *(Simultaneous crosstalk)*

24 A. That's a --

25 Q. (By Ms. Taylor) -- [Zoom audio difficulty] --

1 A. -- Class C misdemeanor.

2 Q. Thank you.

3 So -- so it was enhanced you said. How
4 was it enhanced, just to kind of explain it for lay
5 folks?

6 A. Sure.

7 So the enhancement is actually a
8 sentencing penalty. So it's still a Class C minor --
9 you know, most minor offense. But the sentencing
10 exposure, if it occurs in an area where it's been
11 declared a disaster, can be up to 180 days in jail,
12 which is the Class B penalty.

13 Q. I see.

14 And so there -- was there a special law
15 passed to allow criminal trespass infractions to be
16 enhanced by a disaster declaration?

17 A. I don't believe it's just -- you know, it's not
18 criminal trespass in particular. It's -- it's just
19 based on the level of the offense.

20 Q. That's one of the enumerated offenses that can
21 be enhanced under the --

22 *(Simultaneous crosstalk)*

23 A. Yes.

24 Q. (By Ms. Taylor) Right. And specially
25 enumerate- --

1 *(Reporter admonition)*

2 THE WITNESS: Sorry.

3 MS. TAYLOR: I apologize.

4 Q. (By Ms. Taylor) So what I was asking is but
5 criminal trespass, Section 30.05 of the Penal Code, is
6 specially enumerated in a law that allows it to be
7 enhanced by a disaster declaration, correct?

8 A. Yes.

9 Q. Okay. And can you tell us a little bit about
10 that disaster declaration if you know, kind of generally
11 when that was issued and under what circumstances?

12 A. Yes.

13 The disaster declaration was issued in the
14 spring of 2021, and it specifically designated that
15 illegal migration was causing a disaster to the State of
16 Texas.

17 Q. Thank you.

18 And I believe the disaster declaration may
19 be one of the exhibits that's been offered in evidence
20 by Applicant. Do you recall whether that disaster
21 declaration was part of the Operation Lone Star program
22 and enforcement initiative?

23 A. Yes. I believe it was.

24 Q. And do you know -- and if you don't, no need to
25 answer, of course.

1 Do you know whether there were statements
2 made in that disaster declaration that indicated the
3 State of Texas' -- or the Governor of the State of
4 Texas' dissatisfaction with federal immigration policies
5 and intent in terms of state immigration policies?

6 A. I would have to refresh my recollection to the
7 actual language of the declaration.

8 Q. Okay. Thank you.

9 So with regard to the charging documents
10 in the cases that you've dealt with, the two in
11 particular that we've talked about and any other
12 cases -- and, again, we're just talking about a
13 situation where it's your personal knowledge.

14 But with regard to the charging documents
15 that you've seen and offense reports to the extent that
16 you viewed them, how would they compare with a normal
17 criminal case in terms of their level of detail?

18 A. They were often short on detail and also
19 oftentimes would leave out an element of the offense.
20 So it might be the location or it might be the specific
21 permission or not -- non-permission to be on the
22 property. I observed offense reports and affidavits
23 where it was law enforcement itself saying that there
24 was not permission granted, which is not sufficient to
25 charge the offense of criminal trespass.

1 Q. Thank you.

2 And earlier when you were discussing the
3 concept of immediate release and that your clients were
4 entitled to immediate release, I think maybe we -- there
5 wasn't any discussion about Article 17.151. Can you
6 explain that a little bit and what that law requires
7 with regard to misdemeanor cases?

8 A. Absolutely. And that is the law that I was
9 vaguely referring to in my testimony.

10 But under 17.151, depending on the level
11 of offense, the prosecuting attorney has a certain
12 amount of time with which to file formal charges against
13 an individual. And if the prosecutor has not filed
14 those charges within the time frame enumerated, then the
15 individual is entitled to immediate personal bond or
16 bond that they can afford to make. So that's
17 essentially how you get to the individual being entitled
18 to immediate release.

19 Q. And that's something that the Court of Criminal
20 Appeals has been pretty firm about, correct, perhaps
21 even with -- [Zoom audio difficulty] -- case from the
22 last year?

23 A. Yes. Absolutely. And the Court of Criminal
24 Appeals has also enumerated that even if that -- if the
25 prosecuting attorney files the formal charge after that

1 time frame but before it's heard before the Court, the
2 individual is still entitled to release.

3 Q. And what are those time frames again, if -- I'm
4 not sure if -- you may have already said this, and I
5 apologize. But could you give us the time frames, kind
6 of from that statute? The relevant ones?

7 A. Yes. Yes. For a Class A misdemeanor, it's 30
8 days. For a Class B misdemeanor, it's 15 days. And for
9 a Class C misdemeanor, it's five days.

10 Q. And so, just to clarify, at the end of that
11 time period, what needs to have happened; and what will
12 happen if it didn't?

13 A. You may have to lead me a little more than
14 that. But -- but what happens is that a judge is
15 supposed to order a personal bond or bond that -- that
16 can be made. And when that happens, somebody is
17 supposed to be released from custody.

18 Q. If -- if charges have -- if they have not been
19 formally charged, correct?

20 A. Within that time frame --

21 Q. Yes.

22 A. -- correct.

23 Q. Okay. Thank you.

24 And can you talk about a typical criminal
25 trespass case not associated with Operation Lone Star?

1 What -- what would that look like in your experience, a
2 typical criminal trespass case of this level.

3 A. So I personally haven't seen a lot of
4 Class C agricultural land trespass cases here in Austin,
5 Texas. So I'm more familiar with Class B, which would
6 be a level that is slightly more serious.

7 But criminal trespass is still regarded as
8 a very low-level offense. When somebody faces a
9 criminal trespass charge, I would typically advise them
10 that they are not looking at jail time. Most
11 prosecutors aren't seeking jail time or hefty fines on a
12 case like that. Many, many criminal trespass cases get
13 dismissed, and they are treated as much less serious
14 offenses in the criminal legal system. It is rare for
15 somebody to be held on pretrial detention on a criminal
16 trespass case.

17 Q. And this is perhaps obvious from the response
18 that you just gave. But are criminal trespass
19 defendants typically given prison sentences as a
20 punishment?

21 A. Absolutely not. And even in the worst case
22 scenario, they're looking at one year in jail maximum;
23 and in my experience, I've never seen that sentence.

24 Q. And that would've been on a Class A, correct?

25 A. Correct.

1 Q. And just to kind of go back to your earlier
2 testimony, were these defendants in Operation Lone Star
3 who were arrested as part of that operation, were they
4 held in prison?

5 A. Yes. They were held in a state prison facility
6 for over two months.

7 Q. A state prison facility for over two months.

8 And how -- and you -- you did say this
9 earlier, but I just want to make sure that I understand.
10 How long of that time that they were held in the state
11 prison facility occurred after a judge ordered their
12 release due to the Article -- the Section 17.151
13 violation?

14 A. Well, they were -- they were released because
15 their case had been dismissed. But they would have also
16 been able to get a personal bond. And they were in --
17 they were still in custody -- in TDCJ custody for over
18 three days. And then they were transferred to
19 immigration custody.

20 Q. Thanks.

21 And you mentioned earlier that -- you
22 alluded to a separate criminal justice system for
23 these Operation Lone Star criminal trespass violators
24 who were arrested. And I think you said something about
25 you felt like it was a separate but unequal criminal

1 justice system, or something to that effect. I don't
2 know that I completely heard or understood your
3 response.

4 Can you explain that a little bit?

5 A. Yes.

6 The individuals that I've seen and
7 represented charged under Operation Lone Star have been
8 treated completely different from other people that I've
9 seen charged with crimes in Texas. So the -- you know,
10 what we just talked about was this delay in getting to a
11 court date and to getting into a first pretrial setting.
12 For these two specific clients that I've been talking
13 about, they were arrested on July 25th, and they did not
14 get an attorney for more than a month. They only got
15 attorneys because I went down and found them. So they
16 are outliers in how quickly they ended up with attorneys
17 at the beginning of this operation.

18 Similarly, you know, the time between
19 arrest and one's first court date is far longer than
20 anywhere else that I've seen in my practice. The idea
21 that you would be arrested and magistrated and given no
22 court date and no lawyer and no access to the criminal
23 legal system, and instead are just sitting in jail, is
24 unlike anything I've ever seen.

25 And, again, I've -- you know, I represent

1 people that are charged in kind of normal environments,
2 and there are sometimes delays, but there are lawyers to
3 advocate for release. And here, people were held far
4 beyond the statutory requirements under 17.151, and yet
5 they had no way to access relief until we did a lot of
6 work with a team of lawyers to get appointed, to write
7 the motion -- to write the writ, to get the writ
8 calendared. And that's just for, you know, two out of
9 thousands of people that are being imprisoned.

10 MS. TAYLOR: Pass the witness.

11 MR. SCHULMAN: May I have some questions?

12 THE COURT: You may.

13 **CROSS-EXAMINATION**

14 BY MR. SCHULMAN:

15 Q. Professor, have you reviewed any of the arrest
16 documents in the case of Mr. Guzman Curipoma?

17 A. I have not.

18 Q. Did you visit with Mr. Guzman Curipoma?

19 A. I have not.

20 Q. So you really have no knowledge where anything
21 you have testified to now has any application to the
22 incident case.

23 A. I'm testifying about what I know about
24 Operation Lone Star.

25 Q. Okay. Not about this case.

1 A. I do not personally know this case.

2 MR. SCHULMAN: At this point, Your Honor,
3 I'd move to strike Professor Dyer's testimony. It fails
4 to -- she is called as a law professor talking about the
5 operation. She's therefore an expert. Her testimony
6 does not satisfy Daubert and Kelly. And she can make no
7 application to the incident case.

8 MS. TAYLOR: Your Honor, just to clarify,
9 the State has no objection to Ms. -- to Professor Dyer's
10 qualifications as an expert on this subject and does not
11 have any objections to her testimony and does not agree
12 that -- or join in that motion to strike.

13 THE COURT: All right. The testimony is
14 admitted. The objection's overruled.

15 THE COURT REPORTER: Judge, did you say
16 the testimony is admitted?

17 THE COURT: Yes. And the objection is
18 overruled.

19 MR. SCHULMAN: And I have no questions of
20 the witness, Your Honor.

21 MS. MIRÓ: I have no further questions,
22 Your Honor.

23 THE COURT: All right.

24 So anything further from you, Ms. --

25 *(Simultaneous crosstalk)*

1 MS. COGLIANO: Judge --

2 THE COURT: -- Cogliano?

3 MS. COGLIANO: -- I know that you gave us
4 one hour. I can definitely tailor the next testimony
5 because Ms. Taylor covered a lot of what they were going
6 to cover with the next witness in her cross-examination
7 of Ms. Dyer. But I would request that we are allowed to
8 present, you know, what we haven't yet presented,
9 especially considering that a large amount of the delay
10 today is due to the appearance of somebody who's not
11 here representing the State presenting argument and
12 cross-examination.

13 THE COURT: Yes. I've already told my
14 staff we're going to suspend the time deadlines.

15 MR. SCHULMAN: That's actually --

16 THE COURT: So --

17 *(Simultaneous crosstalk)*

18 MR. SCHULMAN: -- actually reasonable,
19 Your Honor.

20 THE COURT: All right.

21 Ms. Cogliano, your next witness?

22 MS. COGLIANO: Thank you, Judge. We're
23 going to call Kristin Etter.

24 THE COURT: All right. Ms. Etter, would
25 you raise your right hand and be sworn, please.

1 **KRISTIN ETTER,**

2 having been first duly sworn, testified as follows:

3 THE COURT: You may proceed, Ms. Cogliano.

4 **DIRECT EXAMINATION**

5 BY MS. COGLIANO:

6 Q. Hi, Ms. Etter. I'm just going to start off
7 with, do you have any knowledge about Mr. Guzman
8 Curipoma's specific case?

9 A. No, I do not.

10 Q. Do you have any personal knowledge about
11 Mr. Guzman Curipoma in any capacity?

12 A. No, I do not.

13 Q. Do you have familiarity with the operations and
14 the practices of Operation Lone Star?

15 A. Yes, I do.

16 Q. So let's start there.

17 How do you have any knowledge about the
18 operations and practices of Operation Lone Star?

19 MR. SCHULMAN: May I interject one second,
20 please, Your Honor?

21 We would -- we would object to the
22 testimony on the same basis as previously offered.
23 She'd be unable to tie it to the individual case.

24 MS. COGLIANO: Judge, we plan to tie it to
25 the individual case. Right now we're establishing a

1 pattern of behavior that we are going to bring in facts
2 to show that Mr. Guzman Curipoma was similarly treated
3 under the same procedures and policies.

4 THE COURT: All right. The objection is
5 overruled.

6 Q. (By Ms. Cogliano) Ms. Etter, could you please
7 restart answering how you are familiar with Operation
8 Lone Star?

9 A. Yes.

10 I am currently employed -- I'm an attorney
11 for Texas Rio Grande Legal Aid and Special Project
12 Director of the Operation Lone Star Program within my
13 organization. Our organization has been assigned to
14 represent approximately 751 people that have been
15 charged under Operation Lone Star. Of that number, 743
16 of them were charged with criminal trespass.

17 Q. And how many of those are charged with felony
18 crimes?

19 A. Of the 751 that I just described, seven of them
20 are charged with felonies, and the rest are charged with
21 only criminal misdemeanor -- misdemeanor criminal
22 trespass.

23 Q. So what percentage of your caseload is,
24 therefore, anything other than misdemeanor criminal
25 trespass cases?

1 A. The misdemeanor criminal trespass cases
2 comprise 99 percent of our cases. And it's my
3 understanding that the numbers that Ms. Dyer just talked
4 about, in terms of the people that are being detained in
5 the Texas Department of Criminal Justice facilities --
6 both the Dolph Briscoe Unit, as well as the Segovia
7 Unit -- it's my understanding that the numbers are
8 similarly reflected in those two prison units that house
9 people charged under Operation Lone Star.

10 Q. Thank you, Ms. Etter.

11 And in your capacity as being the director
12 of Operation Lone Star cases for Texas Rio Grande Legal
13 Aid, have you had a lot of experience on the ground,
14 both for the purposes of getting people out of custody
15 and litigating their cases in court down in Kinney and
16 Val Verde Counties?

17 A. Yes. Well, currently, everything is being
18 conducted via Zoom. But my organization has been
19 involved, like I said, in -- in approximately 751 cases.
20 And our representation entails every aspect of that,
21 from our initial assignment, to a person who's been
22 arrested under Operation Lone Star, up through the
23 disposition of cases. And we have interviewed hundreds
24 and hundreds of people, obviously all of our clients,
25 and have also -- I also had opportunity to review

1 hundreds of probable cause affidavits and discovery
2 report -- offense reports, as well.

3 MS. COGLIANO: Your Honor, at this point,
4 I'm going to pull up Defense Exhibit L, which is a
5 declaration prepared by our expert witness in this case.

6 Q. (By Ms. Cogliano) Ms. Etter --

7 MS. COGLIANO: Oh, at this point, we would
8 move to admit Defense Exhibit L. Mr. Hoffman is another
9 legal professor. He's an immigration professor at the
10 University of Houston Law Clinic who specializes
11 specifically in federal preemption litigation in the
12 immigration context. He has reviewed the exhibits in
13 this case, the filings in this case, and -- as well as,
14 obviously, all of the federal law relating to federal
15 preemption. And he has come -- he's laid out the law in
16 his expert declaration and concluded with a number of
17 points in how Operation Lone Star is unconstitutional
18 under the Preemption Doctrine.

19 Again, this declaration was uploaded to
20 Box, and I'd like to admit it at this point so that I
21 can ask some questions about it to Ms. Etter.

22 MS. TAYLOR: Your Honor, the State has no
23 objection to this exhibit. And to reference back to
24 your response to an earlier relevance objection, I know
25 that the Court -- that there's no jury here to prejudice

1 and that the Court can make its own assessments
2 concerning relevance after reviewing it.

3 MR. SCHULMAN: May it please the Court.

4 Given your ruling on relevance, I would
5 only ask for a running objection to all these exhibits
6 under relevance. I would also say that this particular
7 exhibit is inadmissible under Daubert and Kelly because
8 it does not have any bearing on the incident case.

9 THE COURT: All right. So I'm going to
10 overrule the relevance objection and allow a running
11 objection on relevance. I also am going to
12 conditionally admit Applicant's Exhibit L with the
13 understanding that if I find that it doesn't meet the
14 requirements for an expert to testify, that I will
15 ignore it. But, short of that, it is admitted for the
16 purpose of this hearing.

17 So y'all may continue.

18 MS. COGLIANO: Understood, Judge.

19 Q. (By Ms. Cogliano) So, Kristin, I'm just going to
20 direct your attention to Paragraph Number 23, which is
21 our first round of violation of federal preemption law.
22 Would you mind just reading that first paragraph for the
23 record?

24 A. Sure.

25 [As read] Only the federal government may

1 establish immigration policy - namely, the process of
2 "determining who should or should not be admitted into
3 the country" and the "conditions lawfully imposed by
4 Congress upon ... residence of aliens." No mechanical
5 test defines the limit of state power to promulgate,
6 under their state police powers, regulations
7 incidentally affecting immigration. But at a minimum, a
8 state is generally barred from enacting a "comprehensive
9 scheme" for immigration, i.e., a system of state laws
10 that affects "a direct and substantial impact on
11 immigration." Operation Lone Star is prohibited as
12 such. State actors have repeatedly referred to
13 Operation Lone Star as an initiative to enforce border
14 security and immigration policy at the state level that
15 was intended to rival or supplant federal immigration
16 policy. OLS establishes interlocking regulations,
17 executive orders, and statutes to further that
18 intention. OLS is then effectuated as a, quote,
19 immigration policy, end quote, through criminal
20 prosecutions.

21 Q. Thank you.

22 And so this is our argument for field
23 preemption; that the entire immigration policy is the
24 sole field and province of the federal government.

25 And so, Kristin, I'm going to ask you. In

1 that paragraph, they talk about how the intent of the
2 use of this policy has been expressed by state
3 officials. Do you have any personal knowledge of
4 statements and assertions like that being made?

5 A. Yes. It's pretty routine that the state actors
6 involved in implementing OLS have said that numerous
7 times in numerous different forums.

8 Q. And, to your knowledge, has Governor Abbott
9 issued official letters, directives, and communications
10 with other state and federal actors indicating the same
11 intent, to -- to enforce a state immigration policy?

12 A. Yes, he has.

13 MS. COGLIANO: At this point, Judge, I'm
14 pulling up what has been premarked as Applicant's
15 Exhibit Z. This is a letter from Governor Abbott to the
16 border sheriffs talking about the implementation of
17 Operation Lone Star in May 28 -- May 28th of 2021.

18 Q. (By Ms. Cogliano) Kristin, is this an example of
19 one of those communications that was made by Governor
20 Abbott indicating his intent to create a state
21 immigration policy?

22 A. Yes, it is.

23 MS. COGLIANO: And, Judge, just for the
24 interest of time, I just want to point out the part that
25 we have highlighted, which is that the Governor is

1 indicating to the sheriffs that the border security
2 issue is one of the biggest issues for him to address.
3 And because the Biden Administration has stopped
4 enforcing the same policies as previously were enforced,
5 that is why he lodged Operation Lone Star and deployed
6 personnel and resources to guard high-threat areas along
7 the border, and not to arrest individuals for committing
8 criminal trespass.

9 Q. (By Ms. Cogliano) Kristin --

10 THE COURT: All right. Are you
11 offering --

12 MS. COGLIANO: Oh.

13 THE COURT: -- Applicant's Exhibit Z?

14 MS. COGLIANO: Yes, Judge. I offer
15 Applicant's Exhibit Z. Thank you.

16 MS. TAYLOR: Your Honor, the State has no
17 objection to Applicant's Exhibit Z.

18 MR. SCHULMAN: We have the same objection
19 for the Kinney County Attorney's Office as previously
20 stated.

21 THE COURT: All right. Applicant's
22 Exhibit Z is admitted.

23 Q. (By Ms. Cogliano) And then, Kristin, a few days
24 after that communication, what was Governor Abbott's
25 next action for Operation Lone Star?

1 A. I'm aware that after that, after the --
2 declaring the existence of the disaster at the border as
3 a result of the, quote/unquote, border crisis, that
4 there was then -- he then authorized to deploy the state
5 military and Texas National Guard to the border to
6 conduct these criminal trespass arrests.

7 And as was previously testified to by
8 Ms. Dyer, it also allows for each of those criminal
9 trespass charges to be enhanced by one degree of
10 punishment to the next higher punishment range pursuant
11 to the disaster declaration that he's promulgated.

12 MS. COGLIANO: And, Judge, at this point,
13 I pulled up Applicant's Exhibit D, which is the disaster
14 proclamation. For the purposes of this hearing, I've
15 highlighted the segments that Katy Dyer did testify to
16 where he expressly states that he -- that it is the job
17 of the federal government to secure the border; but
18 because he does not agree with the manner and means that
19 the Biden Administration was doing that, that he was
20 going to implement this disaster declaration to further
21 the goals of Operation Lone Star in securing the border.

22 Q. (By Ms. Cogliano) Kristin --

23 THE COURT: Hang on just a minute.

24 Ms. Taylor, is there any objection to
25 Exhibit D?

1 MS. TAYLOR: No, Your Honor. No objection
2 to Exhibit D.

3 THE COURT: All right.

4 And other than your running objection,
5 Mr. Schulman, any other objections to D?

6 MR. SCHULMAN: No, Your Honor.

7 THE COURT: All right. Exhibit D is
8 admitted.

9 MS. COGLIANO: Thank you, Judge.

10 Q. (By Ms. Cogliano) Has Governor Abbott taken any
11 action or communications, similar to these, looking for
12 other state officials outside of Texas to participate in
13 his initiative to create a state immigration policy?

14 A. Yes. I'm aware that he has solicited similar
15 action from other governors asking them to send law
16 enforcement officers to Texas to assist in the arrest of
17 migrants at the Texas border.

18 MS. COGLIANO: Judge, at this point, we
19 move to admit Applicant's Exhibit I, which is a letter
20 written from Governor Greg Abbott and Governor Doug
21 Ducey of Arizona on June 10th of 2021 soliciting the
22 help of other state governors to join in his Operation
23 Lone Star and -- by sending law enforcement personnel to
24 Texas to also be arresting people for criminal trespass
25 for the purposes of securing the border.

1 And the last quote is "Texas and Arizona
2 have stepped up to secure the border in the federal
3 government's absence, and now the Emergency Management
4 Assistance Compact gives your State a chance to stand
5 strong with us."

6 I want to point out in this letter that he
7 also tells the other governors that they will also be
8 enforcing federal crimes, including illegal entry and
9 illegal reentry, which are not crimes that are the
10 province of any of the state governors.

11 So, at this point, we would move to -- to
12 admit Applicant's Exhibit I.

13 MS. TAYLOR: No objection, Your Honor.

14 THE COURT: All right.

15 And, Mr. Schulman, other than your running
16 objection?

17 MR. SCHULMAN: No other objections, Your
18 Honor.

19 THE COURT: All right. Exhibit I is
20 admitted.

21 Q. (By Ms. Cogliano) And the last statement,
22 Kristin, that I'd like to bring up with you: Has
23 Governor Abbott ever communicated this intent to any
24 representative of the federal government?

25 A. Well, not that I'm aware of, I should preface.

1 But what I've seen is that he -- there was a public
2 letter that he disseminated where he wrote a letter to
3 President Biden threatening to enforce immigration
4 policies for him if Biden didn't reinstate the prior
5 administration's policies.

6 Q. And I'm pulling up on the screen what's been
7 premarked as Exhibit H, Applicant's Exhibit H, which is
8 Governor Abbott's letter to President Biden written on
9 November 17th, 2021, where he specifically states that
10 as a result of President Biden's inaction and inaction
11 by the Mexican government, he launched Operation Lone
12 Star for the purpose of helping to secure the border and
13 combat the smuggling of people and drugs in Texas. "In
14 the absence of federal action," Governor Abbott says,
15 "Texas will continue to step up."

16 And just to reiterate, Ms. Etter, we hear
17 this language about wanting to protect Texas from drugs
18 and smugglers and guns. Can you remind us again what
19 percentage of your case load --

20 THE COURT REPORTER: Ms. Cogliano?

21 Q. (By Ms. Cogliano) -- other than criminal
22 trespass?

23 THE WITNESS: Ms. Williamson, did you need
24 some additional time?

25 *(Reporter admonition)*

1 *(Discussion off the record)*

2 THE COURT: All right. So you're offering
3 Exhibit H. Is there -- are there any objections beyond
4 the running objection?

5 MS. TAYLOR: No objections, Your Honor.

6 MR. SCHULMAN: No, Your Honor.

7 THE COURT: Exhibit H is admitted.

8 MS. COGLIANO: At this point, I'm not
9 going to publish, but I am going to move to admit
10 Applicant's Exhibit E, which is a complaint filed by the
11 ACLU asking for a federal investigation into Operation
12 Lone Star, which was attached to Applicant's Application
13 for Writ of Habeas Corpus, which outlines not only the
14 horrific details of the implementation of the policy but
15 also, quote, several times where state actors and
16 Governor Abbott himself have made similar statements
17 that we are discussing here.

18 So we move to admit into the record
19 Applicant's Exhibit E.

20 MS. TAYLOR: No objection, Your Honor.

21 MR. SCHULMAN: Your Honor, I have reviewed
22 the exhibit and have no other objections than those
23 previously voiced.

24 THE COURT: Then E is admitted.

25 MS. COGLIANO: So -- thank you, Judge.

1 Q. (By Ms. Cogliano) Ms. Etter, in your experience,
2 then, given that the intent of Governor Abbott was to
3 create a state-based immigration system, how has your
4 knowledge of the implementation of that system to
5 prosecute people of criminal trespass cases achieving
6 that goal?

7 A. Yes.

8 So similar to the Applicant's case, as
9 well as the 743 individuals that we represent, he's
10 implementing it through pre- -- pretextual misdemeanor
11 arrests of only suspected migrants, which then places
12 those individuals in a separate substandard and unequal
13 criminal justice system based solely on their suspected
14 immigration status.

15 Q. And without going over too much, to reiterate
16 what Ms. Dyer said, is there anything that she described
17 about the system in Kinney County that you disagree
18 with?

19 A. No. And I could only add some additional
20 information if you're interested and if the Court is --

21 Q. Sure.

22 A. -- interested. I know. I agree a hundred
23 percent with what Ms. Dyer testified to. It's
24 absolutely a separate system at every level, and it
25 really starts with the very inception of these cases.

1 So our clients who are civilian migrants
2 in Texas are arrested under a military operation. So
3 we're talking about our clients being apprehended by
4 members of the Texas National Guard, in conjunction with
5 the Texas DPS officers, in a military operation and
6 apprehending them, most of them without any probable
7 cause to begin with, on these low-level criminal
8 misdemeanor trespass cases.

9 As Ms. Dyer testified, they're then from
10 that -- from the very inception of the case, they're
11 funneled into this entirely separate system that she's
12 already described with the magistration. Our clients
13 are detained hours away from the county of prosecution,
14 as she mentioned in Dolph Briscoe. Our clients are also
15 detained in Segovia, which is another Texas Criminal
16 Department of Justice prison facility.

17 And so what -- what happens after they're
18 detain- -- moved -- apprehended, they go through the
19 magistration process. They're then put in prison.
20 Again, we're talking about low-level misdemeanor people
21 that have a presumption of innocence. They are then
22 detained for prolonged periods of time as they await
23 their first court date. And all of these court dates
24 are very specific. You don't go back to your county
25 courthouse. You actually have a separate OLS docket

1 that you have to wait for the judges to assign your case
2 to a docket or the court coordinators to assign your
3 case to a docket. They wait months.

4 And, for example, we just had a client
5 today who has been in prison for 136 days, and today was
6 his first court date. Not his trial. His first court
7 date. So we have these prolonged periods of detention
8 in very harsh conditions, I might add, in -- in these
9 prison facilities that are only authorized to detain
10 adult convicted felons. Again, these are pre-trial
11 misdemeanor detainees that have the presumption of
12 innocence. They are in those -- those prisons for
13 prolonged periods of time. They have to wait until
14 their case is called.

15 We had initially started this -- Operation
16 Lone Star dockets -- these Operation Lone Star dockets
17 had started out with a group of judges that were
18 assigned by the presiding judge of the administrative
19 region, Judge Ables. Those judges were handling all of
20 the cases for the first few months. Those judges were
21 then removed by the local Kinney County judge in that
22 county and basically were replaced by people that he
23 handpicked, or that his commissioners were handpicked.
24 And so while the previous judges afforded our clients
25 due process and were hearing our motions and requests

1 for personal bonds, this new group of judges have not
2 and are detaining and delaying and denying any form of
3 relief that we request.

4 And so, in essence, everything about these
5 prosecutions is different from what you would normally
6 find in a typical criminal prosecution. They have
7 basically been stripped of constitutional and statutory
8 protections that are afforded to everyone. They are
9 then made to wait for months in prison until a court
10 date is -- is set for them. And they are then really
11 coerced to plead guilty to an offense that they're
12 innocent of as their only mechanism to get out of
13 prison.

14 Q. (By Ms. Cogliano) Thank you.

15 And, Ms. Etter, is this the same policies
16 and practices that are being implemented for any
17 individual that is operat- -- that is arrested pursuant
18 to Operation Lone Star?

19 A. Yes.

20 MS. COGLIANO: Judge, at this point, I'd
21 like to make a record. Ms. Taylor and I have agreed to
22 stipulate to the fact that Mr. Guzman Curipoma was, in
23 fact, arrested and is being prosecuted pursuant to
24 Operation Lone Star.

25 MR. SCHULMAN: Your Honor, I would object

1 to that stipulation because there is no evidence to
2 support it.

3 MS. COGLIANO: Judge, the evidence that
4 we're presenting to support it is these practices. And
5 we are going to show that he was arrested during this
6 time with these same practices and by these same
7 entities.

8 But -- but the purpose -- the legal
9 purpose of a stipulation is for a circumstance that
10 Mr. Schulman is describing, which is that we are going
11 to agree to that; and that, in and of itself, is the
12 fact of evidence that's presented in this hearing.

13 MR. SCHULMAN: Your Honor, there is no
14 evidence that this arrest was in any way tied to
15 Operation Lone Star. There is no evidence that the
16 officer who arrested him was not previously assigned to
17 this county or that Mr. -- or that the arrest wouldn't
18 have occurred but for Operation Lone Star.

19 MS. TAYLOR: Your Honor, the State --

20 MR. SCHULMAN: They have the burden --
21 they have the burden of showing that there is -- as
22 applied to Mr. Guzman Curipoma, as set out in the *Perry*
23 case, that it is applied to him. The question in the
24 *Perry* case was whether you could bring it or not, but
25 they clearly showed that it applied to Governor Perry.

1 Nothing in this case shows that Operation Lone Star
2 applies personally to Mr. Guzman Curipoma.

3 MS. TAYLOR: Your Honor, the -- the State
4 has --

5 THE COURT: (Indicating.)

6 MS. TAYLOR: Sorry.

7 THE COURT: Give me a minute to find the
8 un-mute button.

9 So this hearing is hampered by the fact
10 that there are two lawyers or sets of lawyers who
11 purport to represent the State. I have already ruled
12 that the Travis County District Attorney Office, I
13 believe, is properly representing the State of Texas.
14 I've allowed Mr. Schulman to participate, as well. He
15 purports to be Kinney County's attorney.

16 MR. SCHULMAN: Acting Assistant County
17 Attorney.

18 THE COURT: As Acting Assisting --
19 Assistant County Attorney for Kinney County. Kinney
20 County doesn't appear to be a party in this case, but I
21 want to consider all of the issues that Mr. Schulman is
22 raising. And I do -- and -- but, by necessity, the
23 three-hour hearing is going to turn into a much longer
24 hearing as a result of that.

25 I understand that Ms. Cogliano and

1 Ms. Taylor, the Applicant and the State, have agreed to
2 some stipulations, and Mr. Schulman is challenging that
3 stipulation. I will accept the stipulation as a
4 stipulation between the State and the Applicant and note
5 that the Kinney County Attorney's Office disagrees with
6 that stipulation.

7 MS. TAYLOR: Thank you, Your Honor.

8 For the record, the Footnote 1 of the
9 State's answer does provide some explanation for the
10 State's agreement to stipulate to this -- this fact.
11 And the State did not merely rubber-stamp Applicant's
12 assertion that his arrest was part of Operation Lone
13 Star but, in fact, reviewed the arrest report in this
14 case.

15 And, in fact, it appears that Applicant
16 was arrested by a Department of Public Safety trooper
17 rather than local law enforcement. Applicant was
18 subsequently processed and booked at a facility in
19 Val Verde County, which is used by Operation Lone Star
20 for migrant processing. Further, it appears that
21 Applicant was, for a time, incarcerated in a State
22 prison. And for these reasons and others, the State
23 evaluated the facts of this case and determined, based
24 on the facts, that it would agree to stipulate that
25 Applicant was arrested pursuant to Operation Lone Star's

1 enforcement operation to secure the border.

2 MR. SCHULMAN: I would renew the County
3 Attorney's objection.

4 THE COURT: And the objection is
5 overruled.

6 Y'all may continue.

7 MS. COGLIANO: Thank you, Judge.

8 Q. (By Ms. Cogliano) Ms. Etter, I want to just ask
9 you a couple of questions about the separate and
10 distinct way that the individuals charged under
11 Operation Lone Star actually being prosecuted as -- as
12 compared to the average U.S. citizen in -- in Texas
13 criminal courts.

14 In your experience as a defense attorney,
15 when a U.S. citizen is accused -- suspected of a crime,
16 is the decision to arrest or prosecute them ever
17 determined exclusively by their race or their gender?

18 A. No.

19 Q. Under Operation Lone Star, is the decision to
20 prosecute ever based on gender or race?

21 A. Yes. It is in every instance.

22 Q. What are the policies under Operation Lone Star
23 as far as -- as prosecuting based on gender or race?

24 A. Yes.

25 I've been involved in litigation where

1 troopers have testified as to the policy. I also
2 believe it's been widely disseminated in the media that
3 Operation Lone Star only arrests single adult males for
4 criminal trespass.

5 Q. And, Ms. Etter, in your experience as a
6 criminal defense attorney, is it ever the case that
7 every United States citizen charged with a specific
8 crime receives the same exact plea offer from the
9 prosecutor's office within a given county regardless of
10 any difference in facts, circumstances, or mitigating
11 evidence?

12 A. No. In my 20 years of experience, I've never
13 seen a system like this where every single plea offer --
14 by the time our clients get to actually have a court
15 date, they have been in prison for -- like I said, our
16 client today, 136 days. But it's not uncommon that
17 they're in prison for these low-level criminal trespass
18 misdemeanors for over 100 days before a court date.

19 So typically, once they get to court, in
20 every instance, the offer that is made is a time-served
21 offer. And I've been told that it doesn't matter if
22 they're in prison for three days or over a hundred days,
23 the offer is always going to be time served.

24 Q. Ms. Etter, is it your experience that the
25 prosecutions of individuals under Operation Lone Star

1 treat those individuals differently than normal U.S.
2 citizens being charged with crimes in terms of arrest,
3 magistration, detention, transportation, housing, and
4 ultimately discharged from the case?

5 A. Yes. As I have previously testified, it's a
6 totally different, separate, substandard, unequal system
7 from the inception of the -- of the arrest, all the way
8 through the disposition, including post-disposition, as
9 well. So, yes, it's -- it's a completely separate
10 system.

11 MS. COGLIANO: Judge, at this point, I am
12 publishing and will move to admit Applicant's
13 Exhibit AA. It is a 48-second clip of a statement made
14 by Governor Abbott on the news to the people of Texas
15 saying the same thing; that he has developed a new and
16 distinct criminal justice system for the purposes of
17 Operation Lone Star.

18 So, at this point, I move to admit
19 Exhibit AA.

20 THE COURT: All right. Are there any
21 objections other than the relevance objection?

22 MS. TAYLOR: No objections, Your Honor.

23 MR. SCHULMAN: The same objections, Your
24 Honor.

25 THE COURT: All right. The objections are

1 overruled.

2 We are going to go ahead and take a break.
3 We usually do that for the court reporter and the
4 interpreter, if for no one else, after about an
5 hour-and-a-half; and we've been going about an
6 hour-and-a-half. We'll take a 15-minute break.

7 My intention is that we will continue into
8 the noon hour after that so that we can complete this
9 hearing. So if y'all need to get a snack, you're
10 welcome to do that now. And we'll pick back up at
11 11:45.

12 *(Recess taken)*

13 THE COURT: One of the reasons I lifted
14 the time limit is I didn't want you to feel you had to
15 speak faster to get across everything you need to get --
16 get across because that just means we don't get a good
17 record.

18 MS. COGLIANO: Noted, Judge. I will -- I
19 will balance all of those interests.

20 THE COURT: All right. You may continue.

21 MR. SCHULMAN: May I, Your Honor?

22 THE COURT: Yes.

23 MR. SCHULMAN: I -- I cannot confirm the
24 authenticity of this, but I've gotten a text from --
25 from the AG's Office wanting to know why they're not

1 involved and wanting the proceedings to be suspended
2 until they can be involved.

3 THE COURT: All right. Well, that -- that
4 is noted, and we will continue.

5 MS. COGLIANO: I'm going to re-pull up
6 onto the screen Applicant's Exhibit AA which, again, is
7 a 48-second clip. And, at this point, I'll move to
8 admit Exhibit AA into evidence.

9 THE COURT: All right. Any additional
10 objections beyond the running objection?

11 MR. SCHULMAN: No objection, Your Honor.

12 MS. TAYLOR: No objection, Your Honor.

13 THE COURT: All right. Exhibit AA is
14 admitted.

15 *(Applicant's Exhibit AA playing)*

16 Q. (By Ms. Cogliano) So, Ms. Etter, just to -- to
17 reiterate that, was that the Governor of Texas saying
18 that he was creating a court system and a jail system to
19 put people who come across -- to put into it people who
20 came across the border?

21 A. Yes. And I couldn't agree with him more on
22 that aspect.

23 Q. Does he mention that he is putting people in
24 jail because of criminal trespass charges specifically?
25 I guess, is his goal to prosecute criminal trespass, or

1 is his goal to prosecute people for crossing the border
2 as he articulated it in that quote?

3 A. Correct. He has --

4 THE WITNESS: Sorry, Ms. Williamson.

5 A. It appears that he's specific to criminal
6 tres- -- or to coming across the border.

7 Q. (By Ms. Cogliano) Kristin, outside of the
8 disaster declaration, has Governor Abbott issued other
9 executive orders related to Operation Lone Star
10 purporting to enforce a state immigration system?

11 A. I'm familiar with another Executive Order that
12 he issued, GA-37, forbidding the transportation of
13 suspected migrants, and that also related to his alleged
14 disaster declaration on the border. However, it's my
15 understanding that a federal court in El Paso has issued
16 an injunction preventing the implementation of that
17 action on preemption grounds.

18 MS. COGLIANO: At this point, Applicant
19 will move to admit Applicant's Exhibit G, which is also
20 an attachment to the application for writ of habeas
21 corpus, which is the order granting injunction from the
22 El Paso court.

23 MS. TAYLOR: No objections, Your Honor.

24 MR. SCHULMAN: Same objections, Your
25 Honor.

1 THE COURT: All right. Exhibit G is
2 admitted.

3 Q. (By Ms. Cogliano) Ms. Etter, within the context
4 of this distinct criminal justice system that is truly
5 an immigration enforcement system, does Operation Lone
6 Star, through its policies, implicitly require state
7 actors to make independent determinations about the
8 immigration status and legality of their arrestees?

9 A. Yes, it does. I would -- I would mention both
10 at its inception -- so when our clients are initially
11 arrested -- frequently, we see in probable cause
12 affidavits that they refer to the reason that they drew
13 the attention of law enforcement was because of their
14 suspected immigration status. We see that frequently
15 throughout probable cause affidavits for our clients.
16 And so it's requiring state actors, at their inception,
17 to make those determinations.

18 In addition, we see state actors making
19 those determinations on the tail end of the case, as
20 well, as to whether or not they are agreeing to release
21 our clients when they should, in fact, be released.

22 Q. And additional to this implicit requirement
23 that they figure out who is here legally and who is
24 illegally, is there any other state enactment or statute
25 that expressly requires such a determination by state

1 actors?

2 A. Yes. In fact, the Texas Government Code
3 Provision 772.0071 is the creation of the border
4 prosecution unit. And the creation of that unit gives
5 the authority to the border prosecution unit to
6 prosecute crimes committed by people they determine to
7 not have legal status. So that is explicitly written in
8 the Texas Government Code.

9 MS. COGLIANO: And I am going to pull up
10 the Texas Government Code here. This is Applicant's
11 proposed Exhibit R, which is the Government Code
12 provision creating the border prosecution unit. And
13 under Section (E), it says that one of the sources of
14 the authority of the border prosecution is if they are
15 prosecuting someone for a crime that was "committed by a
16 person who is not a citizen or national of the United
17 States and is not lawfully present in the United
18 States."

19 Q. (By Ms. Cogliano) Kristin, are state actors
20 allowed to independently, without guidance and review
21 from the federal government, make determinations about
22 the legality of someone's immigration status?

23 A. No. That is in express violation of the United
24 States Supreme Court's decision in *Arizona v. United*
25 *States*.

1 MS. COGLIANO: And at this point, I'm just
2 going to re-pull up Applicant's Exhibit Q, which are the
3 excerpts from Sheriff Coe out of the contempt hearing
4 and call attention to the last sentence that was read
5 with Ms. Dyer's testimony. If ICE does not want to pick
6 them up, if their hold is rescinded and we determine
7 their status is to be illegal in the United States, we
8 will contact Border Patrol.

9 Q. (By Ms. Cogliano) Kristin, in your experience,
10 is he telling the truth there, that regardless of the
11 ICE hold, he is going to pursue some way of getting
12 these individuals deported even if their cases are fully
13 dismissed?

14 A. Yes. That happens in almost all of our cases.
15 Like I said, the determination is being made on the tail
16 end of the case I will mention both within the
17 Department of Criminal Justice, TDCJ, prison unit, as
18 well as then later with the Kinney County Sheriff's
19 Office.

20 Q. And when he says he contacts Customs and Border
21 Patrol, what is he actually doing in order to get those
22 clients into the custody of Customs and Border Patrol?

23 A. What our clients have experienced is typically
24 a situation that involves them either disposing of a
25 criminal case in the manner that I mentioned previously,

1 through a coerced guilty plea, or through the posting of
2 a bond. Once that happens, those people are entitled to
3 immediate release from the facility where they're being
4 detained.

5 There is the issue with the 48-hour hold
6 by the ICE -- the ICE detention hold. Many of our
7 clients, however, either have the ICE detainer rescinded
8 or have been in much longer than the 48 hours that
9 they're allowed to be helped if there is the ICE
10 detainer that's actually still in place. Nevertheless,
11 TDCJ transportation units are transporting our clients
12 back to the border from the prison units and turning
13 them over to Customs and Border Patrol.

14 THE COURT: All right. Let me, while
15 we're at a pause, ask: Are you offering Exhibit R?

16 MS. COGLIANO: Yes, Judge. I'm offering
17 Exhibit R.

18 THE COURT: Any objection other than the
19 running objection?

20 MS. TAYLOR: No objection, Your Honor.

21 MR. SCHULMAN: Same objections, Your
22 Honor.

23 THE COURT: Exhibit R is admitted.

24 MS. COGLIANO: At this point, that -- I'm
25 going to move on to our more limited testimony that

1 relates to our grounds for conflict preemption.

2 And so to begin, I'm going to bring back
3 up Applicant's Exhibit L, which is our declaration from
4 Professor Hoffman. And the next three sections,
5 Paragraph 24, 25, and 26, focus on conflict preemption.

6 First, that the Operation Lone Star
7 conflicts with federal immigration policy as far as how
8 they determine to prioritize who is subject to removal.

9 The next claim is that Operation Lone Star
10 policies are in conflict with federal policy because
11 they are frustrating the humanitarian relief part of
12 immigration policy that affords people the opportunity
13 to stay in the United States even if they entered
14 illegally in certain circumstances.

15 And, finally, we're arguing that Operation
16 Lone Star conflicts with federal immigration law by
17 ignoring and not following the federal government's
18 non-removal option -- non-criminal removal option by
19 utilizing criminal prosecution in every case that they
20 deem is worthy of expulsion from the United States.

21 Q. (By Ms. Cogliano) Ms. Etter, we've talked about
22 a bunch of writings and statements that Governor Abbott
23 has made discussing Operation Lone Star. I won't pull
24 them all up again to review for each of these claims.
25 But can you tell us if any of them contemplate federal

1 enforcement priorities, humanitarian efforts, or
2 non-criminal resolutions for immigration in an effort to
3 to comply with federal policy?

4 A. No. And, in fact, these specifically disfavor
5 the current federal policies.

6 Q. Have the Biden Administration and ICE
7 implemented and disseminated their policies specifying
8 which individuals the federal government believes should
9 be priority for removal?

10 A. Yes, they have.

11 MS. COGLIANO: At this point, we are going
12 to move to admit Exhibit T, which is a memorandum from
13 ICE regarding their new policies under the Biden
14 Administration. And I will publish that now and move to
15 admit it.

16 THE COURT: Any objection other than the
17 running objections?

18 *(No response)*

19 THE COURT: Hearing none, Exhibit T is
20 admitted.

21 MS. COGLIANO: This is a January 2021
22 memorandum from the Department of Homeland Security
23 saying that the United States faces significant
24 challenges at the border. And in light of those
25 circumstances, they need to create new policies that

1 respect human rights and due process, to adopt
2 appropriate public health guidelines and protocols, and
3 to prioritize responding to threats to national
4 security, public safety, and border security. And the
5 memorandum outlines how they are going to go about
6 implementing those new procedures and what their
7 priorities are in their immigration policies.

8 To follow up, I am going to pull up
9 Applicant's Exhibit U, which is the subsequent release
10 from ICE on February 28th, 2021. And I'm going to move
11 to admit Applicant's Exhibit U into the record.

12 MS. TAYLOR: No objection.

13 THE COURT: All right. So Exhibit U is --
14 *(Simultaneous crosstalk)*

15 MR. SCHULMAN: [Zoom audio difficulty] --

16 THE COURT: -- admitted.

17 MR. SCHULMAN: -- objection, Your Honor.

18 THE COURT: I assumed as such. Unless I
19 hear you speak up, Mr. Schulman, I'll assume that the
20 running objection is made.

21 MR. SCHULMAN: Very good, Your Honor.
22 Thank you.

23 MS. COGLIANO: This document, which also
24 outlines extensively the ground -- the policies that
25 they want to implement and why they want to implement

1 them, it says, "in executing its critical national
2 security, border security, and public safety mission,
3 the Department must exercise its well-established
4 prosecutorial discretion and prioritize its limited
5 resources to most effectively achieve that mission."
6 And this document lays out why they are no longer
7 enforcing ICE holds against individuals charged with
8 crimes like criminal trespass.

9 And, finally, I am going to publish and
10 move to admit Exhibit Y, which is a declaration that was
11 filed in federal litigation between the federal
12 government and the State of Texas regarding Operation
13 Lone Star.

14 Is it sharing?

15 And it's an affidavit of Peter B. Berg,
16 who is currently or -- or was at least August 12th of
17 2021 the Director of Enforcement and Removal Operations
18 for the Department of Homeland Security and ICE.

19 So I move to admit Applicant's Exhibit Y.

20 MS. TAYLOR: No objection.

21 THE COURT: Exhibit Y is admitted.

22 MS. COGLIANO: And this is a nine-page
23 declaration that reiterates most of the content of the
24 two -- two preceding exhibits and lays out why it would
25 be a huge detriment to the federal government if they

1 were forced to remove everybody that the Kinney County
2 Sheriff's Office and the Kinney County Attorney's Office
3 want removed.

4 The Kinney County Attorney's Office and
5 the Kinney County Sheriff have filed suit in federal
6 court for an injunction asking the federal court to
7 require the federal government to comply with the
8 state's requested immigration policy showing that they
9 clearly don't understand that federal immigration policy
10 is in the province of the federal government.

11 Q. (By Ms. Cogliano) Do the policies included in
12 these exhibits, Ms. Etter, prioritize people who pose a
13 threat to national security and de-prioritize persons
14 who are only charged with misdemeanor, non-violent
15 offenses?

16 A. Yes.

17 Q. Does the implementation of Operation Lone Star,
18 under the directives made by Governor Abbott and other
19 state officials, fall in line with those priorities that
20 are established by the federal government?

21 A. No, not at all.

22 Q. Would you say that Operation Lone Star is a way
23 for Texas to facilitate the deportation of those
24 individuals specifically de-prioritized by the federal
25 government?

1 A. Yes, I would. And that's based on, again, our
2 representation of close to 800 people charged under
3 Operation Lone Star.

4 Again, the majority -- over 99 percent --
5 are charged with a very low-level criminal trespass,
6 obviously a non-violent offense. The majority of our
7 clients have never been arrested, and so they pose no
8 threat to national security and, again, a non-violent,
9 low-level criminal trespass.

10 So, no, I would say it's in direct
11 conflict with the stated priorities of the federal
12 government.

13 THE COURT: Let me make -- let me just ask
14 a question and make sure I understand.

15 The -- the Applicant is not asking me to
16 declare Operation Lone Star unconstitutional. In fact,
17 there's litigation pending in federal court about that,
18 as I understand it. The Applicant is asking me to find
19 that, as applied to him, the procedures have been
20 wrongful or illegal and that he should be released from
21 the restraint as a result of the as-applied problem.

22 Do I have that right?

23 MS. COGLIANO: Judge, specifically what we
24 are asking this Court to grant in terms of relief is a
25 dismissal of the case because of a ruling that the

1 prosecution of Mr. Guzman Curipoma, under Operation Lone
2 Star, for criminal trespass is preempted by federal law.
3 And so we're asking specifically for the prosecutions of
4 people suspected to be migrants of non-violent criminal
5 trespass charges under Operation Lone Star is
6 unconstitutional under the Supremacy Clause.

7 But this particular application, Judge,
8 correct, is only applied to Mr. Guzman Curipoma. He is
9 the only Applicant for relief in this case.

10 THE COURT: Thank you.

11 MR. SCHULMAN: May I respond?

12 THE COURT: It really wasn't a question to
13 you, Mr. Schulman. I just was trying to get it straight
14 what they're asking for.

15 All right. You may continue,
16 Ms. Cogliano.

17 Q. (By Ms. Cogliano) Given the dissemination of
18 these federal prioritization policies and general
19 immigration enforcement policies, to your knowledge, was
20 Sheriff Coe of Kinney County aware of the change in
21 federal policies and whether or not ICE would be
22 enforcing holds on criminal trespass arrestees?

23 A. I'm not sure what Sheriff Coe was aware of.

24 MS. COGLIANO: Judge, at this point, I am
25 going to publish Applicant's Exhibit J and move for its

1 admission. It is an affidavit of Sheriff Coe that is
2 also filed in the federal litigation.

3 And I want to be very clear, Judge, that
4 the federal litigation is not about the entirety of
5 Operation Lone Star. It is specifically requesting the
6 Judge to force the federal immigration units to come and
7 pick up individuals charged with criminal trespass out
8 of the Kinney County Jail. That is their specific
9 litigation. The specific litigation in El Paso is
10 related only to an Executive Order issued by Governor
11 Abbott directing the arrest of anyone that looks like
12 they're transporting someone, that's a migrant. And
13 they only contested that specific provision.

14 What we are alleging here is that a
15 combination of Executive Orders, statutes, and policies
16 implemented by the state government constitutes a full
17 immigration scheme. And that's why the prosecutions
18 themselves of my client were unconstitutional; or, in
19 the alternative, the specific provisions of those
20 prosecutions are claim preempted by federal law.

21 I hope that didn't make it more confusing,
22 but I was just trying to -- to lay that out for the
23 Court.

24 And, at this point, we're going to move to
25 admit the affidavit of Sheriff Brad Coe from July 8th of

1 2021.

2 MS. TAYLOR: No objection.

3 MR. SCHULMAN: Same objection.

4 THE COURT: Exhibit J is admitted.

5 MS. COGLIANO: And in this affidavit, I
6 would call the Court's attention to -- to Paragraphs 13,
7 14, and 15 where he says his deputies have asked ICE to
8 come take custody of them. He is not aware of a single
9 occasion when ICE has agreed to come take custody of an
10 illegal alien out of the Kinney County Jail, and that --

11 *(Reporter admonition)*

12 MS. COGLIANO: Sorry.

13 -- and that ICE has notified -- has
14 notified the Sheriff's Office that illegal aliens
15 convicted of criminal trespass would not be accepted for
16 removal proceedings because they no longer meet the
17 criteria for removal under the new policies.

18 Judge, this is contrasted with the
19 Sheriff's testimony in the contempt hearing, which was
20 subsequent to his filing of the affidavit, in which he
21 testified that he would hold any -- any arrestee, even
22 if their cases were dismissed, in custody until ICE came
23 and picked them up, whether or not ICE wanted to. At
24 the time he made that statement, he had already filed an
25 affidavit saying that he was fully well aware that they

1 never were going to do that.

2 Q. (By Ms. Cogliano) Turning briefly to the usurp
3 patient of federal humanitarian relief.

4 Kristin, do you and any other individuals
5 representing people under Operation Lone Star have
6 clients who are pursuing relief through the humanitarian
7 aspects of federal immigration policy?

8 A. Yes. A large number of our clients came to the
9 United States to seek asylum. And under federal law,
10 specifically 8 U.S.C. 1158, a person who wants to seek
11 asylum in the United States can arrive in the United
12 States whether or not at a designated port of arrival to
13 request asylum. Many of our clients in this partic- --
14 that have been charged under Operation Lone Star were
15 coming to the United States to do just that.

16 And I will mention, many of our clients
17 currently have asylum applications pending. So what
18 frequently happens to our clients after they process out
19 of Operation Lone Star state custody is, as we've
20 described, they go to CBP custody currently. Many of
21 our clients, once they get to CBP custody, are either
22 removed to their country of origin; or if they have a
23 fear of return to their country, they're released back
24 into the United States where they are then allowed to
25 apply for asylum.

1 And so we currently have many of our
2 clients that have asylum cases pending that reside while
3 their asylum case is pending in the United States.

4 MS. COGLIANO: Judge, at this point, I am
5 going to publish and then move for admission of
6 Applicant's Exhibit S, which is a declaration prepared
7 by Mr. Guzman Curipoma's immigration lawyer.
8 Mr. Guzman Curipoma's immigration lawyer is Elissa
9 Steglich.

10 And, at this point, we would move to enter
11 into the record Applicant's Exhibit S.

12 MS. TAYLOR: No objection.

13 Q. (By Ms. Cogliano) In this affidavit, it
14 discuss- --

15 THE COURT: Hang on just a minute. Hang
16 on.

17 Let me just say, Exhibit S is admitted.

18 MS. COGLIANO: Sorry, Judge.

19 MR. SCHULMAN: And I have the same
20 objection, Your Honor.

21 THE COURT: Yes.

22 MS. COGLIANO: This exhibit goes into his
23 detention, which we will end with. But I want to point
24 out Paragraph Number 5 which says that ICE subsequent to
25 his release filed the Notice to Appear with the

1 Immigration Court, and Mr. Guzman Curipoma has indicated
2 to the Immigration Court that he feared to return to his
3 home country of Ecuador, and he has requested asylum and
4 related forms of immigration protections. They are
5 currently pending, and they are in -- they are actively
6 pursuing his asylum claim.

7 One safeguard that the federal government
8 has in place to ensure that state governments do comply
9 with their priority policies is by requiring those who
10 do want to help enforce federal immigration policy to
11 sign a contract with ICE that includes specific required
12 training and supervision.

13 Q. (By Ms. Cogliano) To your knowledge, is Kinney
14 County participating in that option, and have they
15 signed one of those agreements with ICE?

16 A. To my knowledge, no.

17 MS. COGLIANO: At this point, we will pull
18 Applicant's Exhibit K, which is a list from the
19 Department of Homeland Security website with all of the
20 counties in the United States that have signed such an
21 agreement. And under "Texas," Kinney County is not
22 listed as one of the counties that has signed an
23 agreement and, therefore, in compliance with the
24 training and supervision if they intend to enforce
25 federal immigration policies.

1 THE COURT: All right. So you're --

2 *(Simultaneous crosstalk)*

3 MS. COGLIANO: [Zoom audio difficulty] --

4 THE COURT: -- offering --

5 MS. COGLIANO: Yes.

6 THE COURT: -- Exhibit K?

7 MS. COGLIANO: Judge, so I move to admit
8 Exhibit K into the record.

9 MS. TAYLOR: No objection.

10 MR. SCHULMAN: Same objection.

11 THE COURT: Exhibit K is admitted.

12 MS. COGLIANO: The second-to-last issue of
13 claim preemption that we have to present is the
14 preemption that federal -- that the -- Operation Lone
15 Star's preempted by the federal government because
16 Operation Lone Star conflicts with the foreign policy
17 goals that are implicated and the consequences that are
18 implicated when you are enforcing a federal immigration
19 policy.

20 The federal government has more vested
21 interest in immigration policy than just the retention
22 or deportation of individuals. Our relationships as a
23 country with other countries and individuals that are
24 foreign nationals have very direct impact on our foreign
25 relations with those countries.

1 Q. (By Ms. Cogliano) So looking back, Kristin, at
2 Exhibit H, which is Governor Abbott's letter to
3 President Biden, which I will pull up --

4 MS. COGLIANO: And this -- highlighting.

5 Q. (By Ms. Cogliano) Kristin, if you haven't had a
6 chance to review this particular component, I
7 understand. But to your knowledge, do -- can you see
8 anywhere in this letter where federal foreign policy as
9 a whole, is implicated?

10 A. Yes. He does discuss relations with Mexico.

11 MS. COGLIANO: So I'll call the Court's
12 attention to the fact that every paragraph in this
13 letter to President Biden is talking about our foreign
14 policy with Mexico as a country, not just the
15 immigration status and deportation of those that are
16 entering the country illegally from Mexico.

17 He says, "I urge you to take action to
18 protect American assets from seizure by the Mexican
19 government." He says, "It has come to my attention that
20 the Mexican government is using militarized police
21 forces," and it requests that the Biden Administration
22 do something about it. And he says that if Biden -- if
23 the Biden Administration does not comport with what he
24 believes is the best federal immigration policy and how
25 it impacts the relationship of the United States with

1 Mexico, that he will take matters into his own hands and
2 continue enforcing what he deems the best policies at
3 the state level.

4 Additionally, I would like to publish
5 Applicant's Exhibit BB, which is a 38-second clip of
6 Assistant -- not Assistant County Attorney -- of the
7 County Attorney, Brent Smith, testifying before the
8 Committee on Corrections discussing what he believes are
9 the main goals of Operation Lone Star and why it is
10 important.

11 At this point, I move to admit Applicant's
12 Exhibit BB.

13 MS. TAYLOR: No objection.

14 THE COURT: Exhibit BB --

15 MR. SCHULMAN: Same objection.

16 THE COURT: Exhibit BB is --

17 MR. SCHULMAN: Well, I think --

18 THE COURT: -- admitted.

19 MS. COGLIANO: Thank you, Judge.

20 THE COURT REPORTER: I'm sorry. Judge,
21 can you say --

22 *(Applicant's Exhibit BB playing)*

23 THE COURT REPORTER: -- that --

24 *(Applicant's Exhibit BB playing)*

25 THE COURT REPORTER: -- one more time?

1 There's someone talking in the background. Or maybe
2 they started the video before I heard the Judge.

3 THE COURT: Right.

4 So, again, Mr. Schulman, you have a
5 running objection, so you don't need to say the
6 objection to relevance. If you have a different
7 objection, you're welcome to say it. But I've already
8 overruled your objection to relevance.

9 Exhibited BB is admitted. And you may
10 play it.

11 *(Applicant's Exhibit BB playing)*

12 Q. (By Ms. Cogliano) Ms. Etter, is that the County
13 Attorney of Kinney County saying that his job is more
14 than just law enforcement; that it's to com- -- it's
15 militarizing the border in order to protect our national
16 security interests?

17 A. Yes.

18 MS. COGLIANO: And finally, Judge, we are
19 going to move to the issue of overdetention. And I will
20 briefly pull back up Professor Hoffman's declaration,
21 which says that "Prolonged detentions of individuals
22 arrested pursuant to Operation Lone Star disrupts the
23 federal framework, putting officers in the position of
24 holding aliens in custody for possible unlawful presence
25 without federal direction and supervision."

1 Judge, this comes directly from the United
2 States Supreme Court decision in *United States v.*
3 *Arizona* where they actually upheld that one provision of
4 the law that required -- that allowed and required for
5 law enforcement personnel making arrests to call ICE and
6 ask for their immigration policy. The reason it was
7 upheld is because it could be read to be in line with
8 what's allowed under federal law, which is that they
9 are -- always have the First Amendment right to call and
10 communicate with ICE about someone's immigration status.

11 However, it very clearly delineated that
12 saying that pursuant to Fourth Amendment law, a
13 detention never can go beyond the scope of what it was
14 initiated for. And since state actors do not have the
15 authority to detain people solely for immigration
16 purposes, that there can be no detention for the
17 purposes of a criminal prosecution or charge that go
18 beyond that which is specifically for only the state
19 criminal prosecution and charge.

20 Q. (By Ms. Cogliano) Kristin, I know we've talked
21 about lot about the overdetention practices in Kinney
22 County. Is there anything that you want to add about
23 the inability of our clients to be released even when
24 their cases are dismissed or they have been issued a
25 personal bond?

1 A. Right.

2 As I've previously mentioned,
3 overdetention is very frequent, and it happens very --
4 very frequently in all of our clients' cases, I would
5 say, or a large majority of them. And it happens for
6 various reasons. It happens because there are so many
7 different agencies that are involved in both the
8 transportation, arrest, and detention of our clients.
9 And it also happens because we have local state actors
10 attempting to make immigration decisions.

11 And so what will happen is frequently,
12 like I mentioned, our clients are entitled to be
13 immediately released if they post a bond and there's no
14 ICE detainer; or if there is an ICE detainer no longer,
15 you know, than the 48 hours, they're entitled to be
16 released immediately. And that -- that is not
17 happening. That never happens, in fact. What we're
18 seeing is our clients are being unlawfully transported
19 by state actors back down to the border once a bond is
20 posted or once a criminal case is disposed.

21 We've had clients that have been in
22 detention up to six weeks longer than they're supposed
23 to based on paperwork errors, based on interagency
24 confusion. And we frequently have clients that are in
25 detention unlawfully because we have state actors trying

1 to enforce immigration law and make determinations as to
2 our clients' immigration status.

3 Q. Thank you.

4 MS. COGLIANO: Judge, at this point, I'm
5 going to re-publish the declaration by
6 Mr. Guzman Curipoma's immigration attorney which lays
7 out the timeline of events regarding his release after
8 he posted a cash bond in the full cash amount of the
9 requested bail with the Kinney County Sheriff's Office.

10 So here beginning with -- with
11 Paragraph 2, she states that [As read] The Immigration
12 Clinic has represented Jesus Guzman Curipoma since
13 October 9th of 2021 when he was notified that he was
14 going to be transferred from the Briscoe Unit to the
15 custody of the U.S. Department of Homeland Security.
16 This was pursuant to a detainer that was issued on
17 September 23rd of 2021. However, according to the
18 records, the detainer was issued subsequent to the
19 posting of his criminal bond with the Kinney County
20 Clerk on September 20th of 2021, which means that he --
21 he paid in full, a full cash bail to the court -- to the
22 Sheriff's Office for the full amount of the bond without
23 there being a detainer on him.

24 He should've been released that very day.
25 There was nothing holding him in custody. But he was

1 continually held in custody until there was an ICE
2 detainer issued three days later, which means that if
3 ICE didn't pick him up, he should've been released on
4 September 25th, 2021. However, we received a call from
5 him in mid-October that he was still in custody. And he
6 was not transported to U.S. Department of Homeland
7 Security until October 10th or 11th. On top of that,
8 Mr. Guzman Curipoma was not trans- -- was not picked up
9 by ICE when he was transported to federal immigration
10 custody. When he was transported to the Office of
11 Immigration custody, they did take him into their
12 custody because of immigration status. But they did not
13 determine him to be a priority to go pick up from the
14 Briscoe Unit and take that initiative on their own to
15 start removal proceedings for him.

16 And so the entire time that he was held in
17 custody, subsequent to his posting of a full cash bail
18 on September 20th of 2021, for a full 20 days he was
19 being unlawfully detained for the purposes of a state
20 immigration policy, not because of any jurisdiction that
21 the County had over his person pursuant to the criminal
22 charges pending against him.

23 I'm also going to publish Applicant's
24 Exhibit O and move to admit Applicant's Exhibit O, which
25 is simply the cash bail receipt. And so we would move

1 to enter this into evidence, as well.

2 MS. TAYLOR: No objection.

3 THE COURT: Exhibit O is admitted.

4 MS. COGLIANO: And, finally, we move to
5 admit Defense [sic] Exhibit CC, which is a combined
6 prosecution unit that we have that we believe is all
7 public record and so can be admitted into court about
8 Mr. Guzman Curipoma's prosecution.

9 Of course, pursuant to our agreement under
10 the Michael Morton Act with the Kinney County Attorney's
11 Office, we cannot admit as evidence in this case any of
12 the discovery materials, meaning the offense report or
13 any other of those privileged materials that we've
14 received in the case, without agreement from the State,
15 which we did not pursue.

16 But at this point, I will move to admit
17 this packet, which includes the -- the criminal trespass
18 affidavit he was prosecuted under, the ticket that he
19 received for his criminal trespass charge, as well as
20 his magistration documents, his PC affidavit, his
21 affidavit of indigency, the interview regarding his
22 mental health status, and his booking documentation into
23 the Briscoe Unit, all of which shows that he was
24 arrested by DPS officers for criminal trespass pursuant
25 to a criminal trespass affidavit acquired by the

1 government solely for the purpose of prosecution under
2 Operation Lone Star.

3 So here is --

4 MS. TAYLOR: Your Honor --

5 MR. SCHULMAN: What exhibit is this?

6 MS. COGLIANO: CC. Applicant's
7 Exhibit CC.

8 And so at this point, we would move to
9 admit Applicant's Exhibit CC.

10 MS. TAYLOR: Your Honor, the State has no
11 objection to the Court considering Applicant's CC.
12 However, I have not had a chance to thoroughly review
13 all of the contents of this exhibit.

14 And in the event that it contains
15 sensitive data concerning the individuals other than
16 Applicant, such as the other individuals who were
17 arrested simultaneously with Applicant, or any other
18 sensitive data or in respect of the agreement that
19 Applicant's counsel entered into under Article 39.14
20 governing discovery, the State would respectfully
21 suggest that this exhibit be admitted under a protective
22 order or seal for the Court's review and the review of
23 the parties and their counsel -- obviously, the --
24 Mr. Schulman, as well -- rather than admitted for
25 purposes of it being available to the public, just in

1 case -- well, for the reasons that I just expressed.

2 MS. COGLIANO: Judge, I --

3 THE COURT: All right.

4 MS. COGLIANO: -- have no objection to
5 that. And to clarify, this exhibit was not uploaded to
6 Box until our break in response to Mr. Schulman's
7 request for more affirmative evidence in the record
8 regarding Mr. Curipoma's arrest and detention.

9 So I have no objection to it being
10 provisionally admitted or it being admitted under a
11 protective order.

12 THE COURT: All right. So --

13 MR. SCHULMAN: May I have --

14 THE COURT: Hang on -- hang on just a
15 minute. Let me just say a couple things.

16 One is sealing documents that have been
17 admitted is difficult. Under the Civil Procedure, Rule
18 76a has to be followed. And the easier thing to do
19 would be to redact any -- any sensitive or -- or
20 personal information.

21 And so I'm going to ask y'all to get
22 together and figure out if -- what, if anything, needs
23 to be redacted. If there's some of it that the Court
24 needs to look at that you want redacted from the public,
25 we can talk about that. But I'm assuming that the

1 things that you would redact aren't things that I need
2 to consider for the purpose of this hearing.

3 Let me just do a time check, because my
4 court reporter is getting tired, and I suspect the
5 interpreter is, as well, because we do usually take a
6 lunch break.

7 So let me just ask, Ms. Cogliano, how much
8 more time you need, approximately?

9 MS. COGLIANO: Judge, that was my last
10 exhibit and question with Mr. Etter. We have
11 Mr. Wischkaemper, which is going to be maybe a maximum
12 of seven, eight questions. It's only to establish some
13 of the data and numbers regarding, like, the
14 prosecutions in Kinney County.

15 MS. TAYLOR: And, Your Honor, the State
16 doesn't intend to bring any witnesses. The State has
17 only six exhibits which have been provided to -- to
18 Applicant ahead of time and also to Mr. Schulman. And I
19 certainly don't -- I have not been told that anyone has
20 any objections to those exhibits. So that -- that's the
21 only evidence that the State plans to offer. Those were
22 also attached to the answer. So you've already seen
23 them.

24 In addition, the State intends to ask the
25 Court to take judicial notice of all of the filings in

1 this case. And that -- that's basically the extent of
2 the State's presentation of evidence. And other than
3 brief closing remarks, that was all we would have.

4 THE COURT: All right.

5 Mr. Schulman, approximately how much time
6 would you like?

7 MR. SCHULMAN: Argument?

8 THE COURT: Just time for argument? You
9 don't -- you don't intend to put on any witnesses?

10 MR. SCHULMAN: I have no witnesses, Your
11 Honor. But I have a request.

12 I'm looking at this document on -- on the
13 Box program, and it's not visible. Most of the
14 documents are this small. I can't search it. So I'd
15 like someone to e-mail me the actual exhibit, please.

16 MS. COGLIANO: Mr. --

17 THE COURT: All right.

18 MS. COGLIANO: -- Schulman, we'll e-mail
19 you that exhibit right now.

20 And, Ms. Taylor, I'll, for convenience
21 sake, include you on that e-mail.

22 THE COURT: So here's what I think that we
23 will do. I think that we will take a lunch break and
24 time for you-all to collect your thoughts for closing.
25 Then you can come back; we will see if anybody wants to

1 cross-examine Ms. Etter; and then allow you to put on
2 Mr. Wischkaemper -- I hope I'm saying that right -- and
3 then we'll do closing arguments.

4 So let's take about an hour for lunch.
5 It's 12:33. Let's be back at 1:30.

6 MS. COGLIANO: Thank you, Judge. And
7 thank you for accommodating all of the things that have
8 come up today.

9 MS. TAYLOR: Thank you, Your Honor.

10 THE COURT: All right.

11 *(Luncheon recess)*

12 THE COURT: Before we go back into
13 testimony, one of the things I had asked y'all to do was
14 take a look at Exhibit CC and see if there were things
15 you could agree to redact so that you weren't concerned
16 about whatever you were concerned about before lunch.

17 MS. COGLIANO: Judge, Mr. Schulman's
18 concern about the size of the documents in the file was
19 accurate. They're, like, all different sizes. And so
20 it took us a minute to do redactions. But I'm e-mailing
21 them right now, and I expect everyone's going to be okay
22 with them. It just took a little longer than we thought
23 because of some encryption in the file.

24 MR. SCHULMAN: Yeah. I got a copy, and I
25 was able to blow it up and search it.

1 MS. COGLIANO: Of the redacted?

2 Mr. Schulman, I didn't send you the new redacted CC yet.

3 MR. SCHULMAN: I think you redact whatever
4 you want, whatever the Court wants you to.

5 MS. COGLIANO: Okay.

6 MS. TAYLOR: And, Your Honor, just to
7 clarify, I was able to view all of Applicant's
8 Exhibit CC. And I particularly had been concerned that
9 there might be things like dates of birth and personal
10 data like that associated with individuals other than
11 Ms. Cogliano's client. And I was able to determine that
12 although there is some sensitive data in the document
13 which I believe that Ms. Cogliano is redacting or has
14 redacted, there is not any sensitive data that I found
15 associated with anyone other than their client.

16 THE COURT: All right. Then if you will
17 upload the redacted Exhibit CC and just put CC, paren,
18 "Redacted," we'll know that that one is the one I'm
19 admitting. You can't delete documents from Box. Only
20 my staff can do that. But we'll know the correct one if
21 you write "Redacted" in the title of it.

22 MS. COGLIANO: Judge, that's been done.
23 And "Redacted" is included at the end of the file name.

24 THE COURT: All right. Then that redacted
25 Exhibit CC is admitted.

1 All right. Then I believe -- is there
2 something you need to do, Ms. Chipelo, to make sure that
3 Mr. Guzman Curipoma has access to the Spanish channel?

4 JUDICIAL EXECUTIVE ASSISTANT: He just
5 needs to switch back over to the Spanish channel.

6 THE COURT: All right. Good. I think
7 we're there.

8 Then I believe Ms. Etter was testifying.
9 And do you have any questions for her --
10 where are you -- there -- Ms. Taylor?

11 MS. TAYLOR: Your Honor, we do not have
12 any questions of this witness.

13 MR. SCHULMAN: Nor do I --

14 THE COURT: All right.

15 MR. SCHULMAN: -- your Honor.

16 THE COURT: All right.

17 Anything further with this witness,
18 Ms. Cogliano?

19 MS. COGLIANO: Judge, we did have one more
20 exhibit that we have already e-mailed to opposing
21 counsel that we'd like to enter through Ms. Etter, but
22 that's it. Then we'll -- we'll be done with her
23 testimony.

24 THE COURT: All right.

25 Q. (By Ms. Cogliano) Ms. Etter, I'm going to pull

1 up what's been marked as Applicant's Exhibit DD, which
2 is a calendar for the Kinney County Courts specifically
3 designated only for Operation Lone Star cases. And what
4 we've done is only include the page of the calendar that
5 our client Mr. Guzman Curipoma's case was listed on.
6 And we've redacted the names of all of the other
7 defendants that were included on that calendar.

8 And so, at this point, we would move to
9 admit Exhibit DD.

10 MS. TAYLOR: No objection.

11 MR. SCHULMAN: Your Honor, I have the same
12 objections. That is not evidence of prosecution, and
13 it's irrelevant.

14 THE COURT: All right. That objection is
15 overruled. And Exhibit DD is admitted.

16 MS. COGLIANO: Thank you.

17 Q. (By Ms. Cogliano) Ms. Etter, what -- what is
18 this calendar for?

19 A. This is what I referred to in my previous
20 testimony, how all of our clients are funneled into this
21 separate criminal justice system. And specifically,
22 they are put on a special docket. And as you can see
23 from the top, it says "Operation Lone Star." And so all
24 of our clients being prosecuted under Operation Lone
25 Star are assigned these dockets, and -- and they are

1 specifically entitled "Operation Lone Star" dockets,
2 setting them apart from any other case that might be
3 filed in the particular county, Kinney County in this
4 situation.

5 So, again, it's a doc- -- a docket sheet
6 that shows -- gives the person's name, cause number,
7 arrest date. And, again, all of these are for criminal
8 trespass -- misdemeanor criminal trespass charges on the
9 special Operation Lone Star docket.

10 Q. And, to your knowledge, does the designation of
11 Operation Lone Star docket indicate that all of these --
12 all of the people on this docket were arrested pursuant
13 to Operation Lone Star policies?

14 A. Yes. They would not be on this docket unless
15 they were arrested under Operation Lone Star.

16 Q. And the Kinney County Court Honorable Judge
17 Tully Shahan, is that the judge that you were -- that we
18 heard about earlier that has been deeply involved in how
19 the dockets are running and who gets to hear cases?

20 A. Yes. He is the judge that removed the
21 originally assigned Operation Lone Star judges that were
22 assigned by the Presiding Judge Ables. And he is the
23 judge that has attempted to replace them with
24 hand-picked judges of his choosing.

25 MR. SCHULMAN: Your Honor, I object to

1 that portion of Ms. Etter's testimony. She has no
2 personal knowledge of why the judge put these on the
3 docket, nor would she. And the fact that the judge put
4 them on this docket does not pertain to the nature of
5 the arrest or -- or why the officer arrested them.

6 Q. (By Ms. Cogliano) Kristin, about --

7 MS. COGLIANO: I'm sorry, Judge. I'll let
8 you rule on that.

9 THE COURT: Well, I'll let you go back and
10 lay the foundation on that, if you -- if you will.

11 MS. COGLIANO: Sure.

12 Q. (By Ms. Cogliano) Ms. Etter, approximately how
13 many Operation Lone Star hearings have you participated
14 in since becoming the Director of Operation Lone Star
15 for --

16 THE COURT REPORTER: I'm sorry. I didn't
17 understand the last part of your question, Ms. Cogliano.

18 MS. COGLIANO: Since she became the
19 Director of Operation Lone Star for the Texas Rio Grande
20 Legal Aid.

21 A. Approximately 600.

22 Q. (By Ms. Cogliano) Have you, in all of those
23 cases in Kinney County, received dockets that look like
24 this?

25 A. Yes. And I should preface, of those 600, most

1 of them were in Kinney County. Some of them have been
2 in Val Verde County. But regardless of its -- if it's a
3 Kinney County or a Val Verde County arrest, all of our
4 clients are listed on these Operation Lone Star dockets
5 as -- as the first court date. For example, the
6 "Arraignment/Plea Docket," as you can see in that top
7 portion of the -- of the docket, yes. This -- this
8 looks the same as all of the other cases that we have
9 and all of the other dockets that we've received and
10 individual clients that we have represented in Operation
11 Lone Star.

12 Q. And in those 600 hearings that you received
13 dockets like this, have you ever had a client or seen a
14 client on those dockets that was not arrested pursuant
15 to Operation Lone Star?

16 A. No.

17 Q. Have you ever seen a client of yours or another
18 Operation Lone Star defendant that was put on a docket
19 that is not designated an Operation Lone Star docket?

20 A. No. The only exception to that is when we
21 filed writs of habeas corpus in other jurisdictions.
22 Like, for example, we have had -- because of the -- the
23 prolonged detention that our clients face without being
24 set for court in Kinney County, we have filed writs of
25 habeas corpus on behalf of several hundred of our

1 clients. And we have been able to get -- it takes --
2 I should also mention that from the date of filing a
3 writ of habeas corpus in the Kinney County District
4 Clerk's Office, it takes approximately one month for the
5 Kinney County Clerk's Office to accept a filing.

6 So, for example, our most recent filing
7 occurred on -- in the Kinney County District Clerk's
8 Office, we submitted for filing a writ of habeas corpus
9 on November 5th. And the Kinney County Clerk's Office
10 did not accept that filing until December 3rd. And it
11 wasn't until December 13th that we were given a hearing
12 in the 63rd Judicial District Court pursuant to our writ
13 of habeas corpus. So that would be the only other
14 exception.

15 But, no, other than the writ of habeas
16 corpus that we have to file in other forums, either in
17 the district court or otherwise, every time we have a
18 case that gets set for court, it's always on these
19 Operation Lone Star dockets that look exactly like this.

20 Q. And can you tell from this document whether
21 it's the first appearance or second appearance of the
22 defendants listed?

23 A. So -- yes. What they've done is they -- see on
24 the top right-hand corner it says "Arraignment/Plea
25 Docket"? And so what that is, is the arraignment is the

1 first court date that they are able to have in these
2 Operation Lone Star cases. And you can tell because all
3 of these clients are set for arraignment/plea. And if
4 it was another court date, it would be written, for
5 example, pre-trial hearing.

6 But, yes, this would be the first court
7 date.

8 Q. And so considering that, what this indicates is
9 that Mr. Guzman Curipoma was arrested on September 10th
10 and received his first court date on December 29th of
11 2021.

12 A. Yes. And that is pretty typical. Like I
13 mentioned, we have clients that wait for months. Today,
14 like I said, we had a client that was in custody for 136
15 days before he had his first court date.

16 So, yes, that -- that is very typical of
17 these cases.

18 Q. To your knowledge, has any defendant arrested
19 pursuant to Operation Lone Star that wants a trial yet
20 received a trial in their case?

21 A. No. There have been no trials scheduled in any
22 of the Kinney County cases despite the fact that as of
23 today, I believe -- as of Kinney County arrests through
24 January 9th of 2022, there have been 2,020 arrests made
25 in Kinney County under Operation Lone Star. None of

1 those cases have been set for trial.

2 MS. COGLIANO: I'll pass the witness.

3 MS. TAYLOR: I apologize. Was that
4 exhibit ever admitted?

5 MS. COGLIANO: Oh, that's what we were
6 doing, setting foundation.

7 MS. TAYLOR: Okay.

8 MS. COGLIANO: Judge, now I would move to
9 enter Exhibit DD.

10 THE COURT: Actually --

11 *(Simultaneous crosstalk)*

12 MR. SCHULMAN: May I -- [Zoom audio
13 difficulty] --

14 THE COURT: -- I did -- I did admit the
15 exhibit. There was an objection to her knowledge of
16 what this docket was about that caused me to ask for
17 foundation. And so, in any event --

18 MS. TAYLOR: I would say, Your Honor, that
19 the State does not dispute Ms. Etter's extensive
20 knowledge concerning the Operation Lone Star docket and
21 this document.

22 THE COURT: All right.

23 MR. SCHULMAN: May I cross-examine or take
24 the witness on voir dire?

25 THE COURT: So, Ms. Cogliano, you're

1 through with questions for her?

2 MS. COGLIANO: Yes, Judge.

3 THE COURT: And, Ms. Taylor, you have
4 none?

5 MS. TAYLOR: No, Your Honor. I do not
6 have any.

7 THE COURT: All right.

8 Then, Mr. Schulman, you may proceed.

9 **CROSS-EXAMINATION**

10 BY MR. SCHULMAN:

11 Q. Ms. Etter, what knowledge do you have that --
12 on any of the cases in this docket, that the arresting
13 officer was arresting them pursuant to Operation Lone
14 Star and the County Judge just put them on? Do you have
15 any knowledge that that didn't happen?

16 A. Do I have any knowledge that that didn't
17 happen?

18 Q. Correct.

19 A. So, as I previously mentioned, in all of our
20 cases, if you are on an Operation Lone Star docket, that
21 means, given my personal experience with close to 800 of
22 these cases, that you were arrested pursuant to
23 Operation Lone Star. So, given the fact that Mr. Guzman
24 is listed on this docket and on the top it says
25 "Operation Lone Star," that is -- that's a deduction

1 that I made.

2 Q. Yes. But you have no knowledge, let's say, for
3 example, the officer who arrested Mr. Guzman Curipoma
4 was in any way involved in Operation Lone Star.

5 A. Other than it states "Operation Lone Star" on
6 the top of the docket.

7 Q. On the docket. But the docket is created in
8 this case, what you would say, something like three
9 months after the arrest.

10 A. Right. And I'm presuming that you wouldn't put
11 somebody on an Operation Lone Star docket who wasn't
12 arrested under Operation Lone Star.

13 Q. And why would you presume that?

14 A. Because, as I mentioned, Operation Lone Star
15 has created this separate system. And I don't see
16 anybody else that has to be subjected to this Operation
17 Lone Star system other than individuals who are arrested
18 under Operation Lone Star.

19 Q. Well, would you agree that it's quite possible
20 the officer arrested these people, Mr. -- Mr. Guzman
21 Curipoma and those with him, simply because of where
22 they were, when they were, and not having anything to do
23 with Operation Lone Star?

24 MS. COGLIANO: Judge, I'm going to object
25 at this point. I'm going to lodge my first objection.

1 I believe that the question has been asked and answered
2 several times how she came to that conclusion.

3 MR. SCHULMAN: I'm not challenging her
4 conclusion. I'm asking her --

5 THE COURT: I'll -- I'll overrule the
6 objection.

7 You may answer the question.

8 A. Could you repeat the question? That was
9 confusing.

10 Q. (By Mr. Schulman) What evidence do you have --
11 or what makes you so sure that, at the time he arrested
12 Mr. Guzman Curipoma, that the arresting officer didn't
13 arrest him simply because of where they were, what they
14 were doing, and had nothing to do with Operation Lone
15 Star?

16 MS. TAYLOR: Your Honor, now I'm going to
17 lodge an objection. I do not see how Counsel's question
18 has any relevance to the admissibility of this document.
19 The document simply represents that this individual is
20 listed on Operation Lone Star docket and doesn't say
21 anything about the motivations of the officer that
22 arrested him.

23 MR. SCHULMAN: Your Honor, but it is the
24 motivation of the officer that's at issue in this case.
25 If the officer arrested this fella and it had nothing to

1 do with Operation Lone Star, the fact that the judge
2 later puts it on a docket does not change the fact of
3 the arrest.

4 THE COURT: And I'm going to overrule the
5 objection, and I will give the testimony the proper
6 weight.

7 MR. SCHULMAN: I don't believe we got an
8 answer to the question.

9 A. I would say -- Mr. Schulman, I would direct
10 your attention to the probable cause affidavit, if you
11 had any questions about the basis of Mr. Guzman's
12 arrest, that was previously admitted into evidence --

13 Q. (By Mr. Schulman) Right.

14 A. -- and that should answer your question.

15 Q. Right. But does the affidavit in any way refer
16 to Operation Lone Star?

17 A. Many of the probable cause affidavits do, in
18 fact, refer to Operation Lone Star.

19 Q. Correct. Many of them do. But does the
20 probable cause affidavit in this case refer to Operation
21 Lone Star?

22 A. I haven't seen it. And so, again, I would just
23 direct your attention to that. It's previously been
24 admitted into evidence.

25 Q. Okay.

1 MR. SCHULMAN: I would ask the Court to
2 take judicial notice of what is on the arrest affidavit
3 and that it does not refer to Operation Lone Star.

4 THE COURT: So if the exhibit has been
5 admitted, then it's been admitted. And the Court --

6 MR. SCHULMAN: Thank you.

7 THE COURT: -- has admitted it.

8 Anything further, Mr. Schulman, for this
9 witness?

10 MR. SCHULMAN: No, Your Honor. I have no
11 further questions.

12 THE COURT: All right. Anything further
13 for this witness, Ms. Cogliano?

14 MS. COGLIANO: No, Judge.

15 And I just want to make sure I do this
16 for the record and move to admit all of Applicant's
17 Exhibits A through H. I -- some of them I did admit
18 over the course of this hearing. But those are
19 specifically the exhibits that were attached to my
20 application, and I just want to make sure I put on the
21 record that I'm moving to admit those additionally as
22 exhibits in this case.

23 THE COURT: All right.

24 MS. TAYLOR: The State has reviewed those
25 and has no objection to those exhibits.

1 MR. SCHULMAN: And Your Honor understands
2 my objection.

3 THE COURT: I do.

4 Exhibits A through H are admitted.

5 MS. COGLIANO: So, Judge, our next witness
6 is Philip Wischkaemper, and Ms. Miró is going to be
7 handling that direct examination.

8 THE COURT: All right.

9 Mr. Wischkaemper, would you un-mute
10 yourself and raise your right hand, please?

11 **PHILIP WISCHKAEMPER,**
12 having been first duly sworn, testified as follows:

13 **DIRECT EXAMINATION**

14 BY MS. MIRÓ:

15 Q. Would you please state your name and spell it
16 for --

17 Can you hear me okay?

18 A. I can.

19 Q. Okay. Would you please state your name and
20 spell it for the record?

21 A. It's Philip, with one "L," Wischkaemper,
22 W-i-s-c-h-k-a-e-m-p-e-r.

23 Q. Mr. Wischkaemper, what is your profession?

24 A. I am the Chief Defender for the Lubbock Private
25 Defender Office for the next five-and-a-half months.

1 Q. And what does the Lubbock Private Defender
2 Office generally do?

3 A. We are a 501(c)(3) nonprofit corporation that
4 contracts with Lubbock County to do all of their
5 indigent defense for adults.

6 Q. Is LPDO involved in Operation Lone Star?

7 A. We are.

8 Q. And how so?

9 A. Back in July, the Indigent Defense Commission
10 contacted our executive director and asked if we would
11 be the central clearinghouse for the assignment --
12 recruitment, assignment, and payment of attorneys as --
13 as a part of Operation Lone Star.

14 Q. And so, to this date, is there any other
15 organization appointing attorneys to represent Operation
16 Lone Star clients?

17 A. Not that I'm aware of.

18 Q. In preparation for this hearing, did we ask you
19 to review the details and the number of appointments
20 that your office has handled so far?

21 A. You did.

22 Q. And would you say -- how many cases are pending
23 under Operation Lone Star that your office has appointed
24 attorneys to as of Monday of this week, which would have
25 been the 11th of January?

1 A. Actually, I think it was the 10th.

2 But as of the -- as of Monday, we had
3 processed 2518 cases.

4 Q. Okay.

5 A. Again, most of those, I think, are still
6 pending. But there -- there have been some pleas of
7 that 2518.

8 Q. How many of those cases are misdemeanors?

9 A. Of the vast majority, 2326 show to be
10 misdemeanors.

11 Q. So would that be about 92 percent of the cases?

12 A. About 92 to 95 percent. I went to -- I went to
13 law school because I couldn't do math. But that sounds
14 about right.

15 Q. I can't do math either. I'm hoping my number
16 is correct, but I think it's correct.

17 So of those misdemeanor cases, would you
18 say that over 95 percent of those are for criminal
19 trespass?

20 A. The vast majority, yes. I would say 95 percent
21 are criminal trespass cases.

22 Q. So let's say that somebody goes into a
23 property, for example, and breaks a fence or destroys
24 some kind of property. While they're committing
25 criminal trespass, what would they be charged with?

1 A. Very likely criminal mischief would be my
2 guess.

3 Q. Okay. Are there any cases -- any of the
4 misdemeanor cases that you have seen criminal mischief?

5 A. In my perusal of -- of the 2500 or so this
6 morning, I didn't see any criminal mischiefs. I saw
7 some other misdemeanors, possession of marijuana,
8 unlawfully carrying a weapon, resisting arrest, things
9 like that, but -- but no criminal mischief.

10 Q. And based on the numbers, would you say that
11 there are 192 felony cases pending under Operation Lone
12 Star? Would that --

13 *(Simultaneous crosstalk)*

14 A. That --

15 Q. (By Ms. Miró) -- correct?

16 A. That's correct. We -- that's what we counted
17 was 192.

18 Q. Okay. And of those 192 cases, how many of the
19 accused are United States citizens?

20 A. By our count, we can confirm -- or believe we
21 can confirm 132 of those 192 are U.S. citizens. We
22 weren't able to determine the nation of origin of seven
23 of those 192, which leaves 53 non-citizens charged with
24 felonies.

25 Q. Okay. So that would be that -- again, math --

1 non -- non-citizen felony cases would be about
2 2.1 percent of all the felony cases?

3 A. Yeah. Between 2.1 and 2-1/2 percent,
4 2-1/2 percent maximum.

5 Q. Of the felony cases, are there any criminal
6 mischief cases?

7 A. I didn't see any criminal mischief cases. I
8 saw organized crime, prohibited substance in a penal
9 institution, evading in a vehicle or watercraft,
10 smuggling -- lots of smuggling of persons, UUMVs,
11 possession of a controlled substance. There was an
12 arson, tampering, prohibitive weapon charge. But no
13 criminal mischief charges that I saw.

14 Q. Okay. And those -- okay.

15 Are we talking there about felonies or
16 misdemeanors?

17 A. These -- these were felonies. These were the
18 other felonies that I saw as I went through the -- the
19 2518 cases. But I did not see a criminal mischief --

20 *(Simultaneous crosstalk)*

21 Q. (By Ms. Miró) [Zoom audio difficulty] --

22 A. -- whether misdemeanor or felony.

23 Q. -- or felony. Okay.

24 So I just want to confirm based on your
25 count as of Monday. So 98 percent of the criminal

1 prosecutions under Operation Lone Star are misdemeanor
2 criminal trespass cases against non-citizens; is that
3 correct?

4 A. Closer to 95 percent --

5 *(Simultaneous crosstalk)*

6 Q. (By Ms. Miró) Ninety-five --

7 A. -- are -- right.

8 MS. MIRÓ: I pass the witness.

9 THE COURT: All right.

10 Ms. Taylor, any questions of this witness?

11 MS. TAYLOR: No questions of this witness,
12 Your Honor.

13 THE COURT: Mr. Schulman?

14 MR. SCHULMAN: Thank you, Your Honor.

15 **CROSS-EXAMINATION**

16 BY MR. SCHULMAN:

17 Q. Mr. Wischkaemper, do you have any personal
18 knowledge of the circumstances of the arrest in this
19 case?

20 A. No.

21 Q. Have you reviewed any of the arrest documents?

22 A. Not in this case.

23 Q. Thank you.

24 MR. SCHULMAN: No further questions.

25 THE COURT: All right.

1 Anything else, Ms. Miró?

2 MS. MIRÓ: Not at this time, Your Honor.

3 THE COURT: All right.

4 So, Ms. Cogliano, do you rest?

5 MS. COGLIANO: Yes, Judge. We rest.

6 THE COURT: And, Ms. Taylor?

7 MS. TAYLOR: Your Honor, the State would
8 offer the six exhibits which are attached to the State's
9 answer. And those have been served on both parties.
10 And I can walk through them if you like and show them on
11 my screen.

12 THE COURT: All right. Is there any
13 objection to the State's six --

14 *(Simultaneous crosstalk)*

15 MS. COGLIANO: No --

16 THE COURT: -- exhibits?

17 MS. COGLIANO: -- [Zoom audio difficulty].

18 MR. SCHULMAN: Your Honor, I have no
19 objection for purposes of the hearing.

20 THE COURT: All right. So State's
21 Exhibits 1 through 6 are admitted.

22 MS. TAYLOR: Your Honor, I would also ask
23 that you take judicial notice just of all the filings in
24 this case, including the writs that this Court has
25 issued.

1 THE COURT: The Court takes judicial
2 notice of its file in this case.

3 Anything further, Ms. Taylor?

4 MS. TAYLOR: The State rests.

5 THE COURT: All right.

6 Mr. Schulman?

7 MR. SCHULMAN: Prior to resting, I would
8 renew our objection to all expert testimony and evidence
9 derived therefrom under both Daubert and Kelly. None of
10 the experts have tied it up and related it to this case
11 at all.

12 MS. COGLIANO: Judge, my response to that
13 is simply that Daubert and Kelly arise out of the Texas
14 Rules of Evidence. And the Texas Rules of Evidence
15 don't apply in this case other than the Rules of
16 Privilege. And so there is no need to comport with the
17 requirements of Kelly and Daubert. And, of course, I
18 expect the Court to review the document and take from it
19 what -- what's deemed appropriate.

20 THE COURT: All right. The objection is
21 overruled.

22 Anything further, Mr. Schulman?

23 MR. SCHULMAN: Yes, Your Honor.

24 At this point, I would advise the Court
25 that pursuant to Section 402.010 of the Government Code,

1 which admittedly pertains to the const- -- challenges
2 to the constitutionality of State statutes, the --
3 Section 402.010 demonstrates a legislative intent that
4 the AG must be involved when there's a claim that a
5 prosecution is unconstitutional.

6 That is the claim in this case, and we
7 would suggest that Your Honor may not enter a judgment
8 without involving the Attorney General.

9 THE COURT: All right. Hang on just a
10 minute. I'd like to pull up that statute.

11 MS. TAYLOR: Your Honor, I would note that
12 this challenge is to an executive initiative involving
13 multiple proclamations, declarations, and orders, and
14 not to a specific state statute. So I'm not a hundred
15 percent sure that this provision applies.

16 THE COURT: All right. And my
17 understanding of the statute -- and I wanted to pull it
18 up to look at it -- is if the challenge is to the
19 constitutionality of a statute, then the AG has to be
20 noticed.

21 But my understanding of this case is that
22 it's not to the constitutionality of a statute. It's to
23 the impact of various provisions of Operation Lone Star
24 to this particular individual. So it's an as-applied
25 challenge, not a challenge to the constitutionality.

1 And -- and specifically 402.010(b) says a court may not
2 enter a final judgment holding a statute of the state
3 unconstitutional before the 45th day after the date
4 notice required by Subsection (a) is served on the
5 attorney general.

6 But that is -- that is not what y'all are
7 asking me to do. You're not asking me to enter a final
8 judgment holding a statute of this state
9 unconstitutional. So I'm going to --

10 MR. SCHULMAN: May I say one more thing,
11 Your Honor?

12 I -- I would say that the Applicant is
13 absolutely asking you to declare the statute
14 unconstitutional as applied to him, and he is being
15 prosecuted pursuant to the criminal trespass statute.
16 They are, therefore, asking you to declare that statute,
17 as applied to Mr. Guzman Curipoma, unconstitutional. We
18 think the Attorney General should be involved.

19 THE COURT: All right. I'm going to deny
20 the request.

21 How long would you each like for a closing
22 argument? Is ten minutes enough?

23 MS. COGLIANO: Yes, Judge.

24 THE COURT: All right. Ms. Cogliano, then
25 you may proceed.

1 **CLOSING ARGUMENT**

2 MS. COGLIANO: You know, Judge, we really
3 appreciate your patience today, because we have had to
4 cram a lot of evidence into this hearing that we've been
5 experiencing over several months. And I know that,
6 objectively, it seems unreasonable that this is
7 potentially happening, but that's why we wanted to go
8 through each and every exhibit that we prepared for the
9 Court. Because what is happening at the border and what
10 happened to Mr. Guzman Curipoma at the direction of our
11 State government is so beyond the realm of -- of how the
12 criminal justice system is intended to exist in Texas
13 and how the immigration system of our country is
14 developed under federal law.

15 *Arizona v. State* is very, very clear, and
16 the group of enactments that we are alleging
17 collectively violate federal law is -- is targeted at a
18 group of individuals who are simply existing at the
19 border and targeting them specifically without asking
20 the federal government on guidance on how to
21 appropriately do that in the State of Texas. We are not
22 sitting here saying that the State of Texas can never
23 protect its citizens from people unlawfully being on
24 their property.

25 But that is not what the intent of the

1 State of Texas is here, and we know that because all of
2 the interested parties that represent the State of Texas
3 have said that to anybody who will listen. Governor
4 Abbott has expressly said it to other state governors.
5 He's expressly said it to the President of the United
6 States. He has expressly said it to his own
7 constituents. And so right on its face, we know that
8 his intent and the motivation behind this program is to
9 usurp federal law.

10 In application it is absolutely doing that
11 during the prosecution of my client in this case. The
12 grounds that we raised are that he has been subject to
13 an unlawful state immigration scheme, which is
14 absolutely what happened to Mr. Guzman Curipoma. He was
15 pro- -- he was arrested and prosecuted specifically
16 attributable to a program that only wants to arrest
17 people that look like migrants.

18 We claimed that he -- his prosecution is
19 illegal because it encroaches on federal enforcement
20 priorities. Mr. Guzman is exactly the kind of person
21 that the new Biden federal policies say that we are
22 de-prioritizing for removal; that all of our resources
23 and all of our need to figure out how to deal with the
24 immigration crisis we're in was reviewed by the federal
25 government and all of the people that are trained and

1 hired to develop these policies. And they came out and
2 they said, We do not think that criminal trespass is
3 good enough use of our resources and our money, and it
4 risks harming people that aren't U.S. citizens and
5 people that are U.S. citizens. And so he is definitely
6 implicated in the federal preemption based on
7 enforcement priorities.

8 As far as frustrating the humanitarian
9 goals of federal immigration policy, Mr. Guzman is a
10 great candidate for asylum. He came here for the
11 purpose of asylum. He has an attorney representing him
12 in his --

13 I'm sorry. I see you.

14 -- representing him in his asylum case.
15 And he was deprived of the opportunity to apply for his
16 asylum for an extended period of time because he was
17 unconstitutionally detained pursuant to this program.
18 Similarly, the federal non-criminal removal policies
19 currently in place specifically state that criminal
20 trespass violations should not subject people to
21 anything except non-criminal removal.

22 And as far as unlawful detention is
23 concerned, Judge, this is an egregious case of unlawful
24 detention. Mr. Guzman Curipoma had no representation;
25 he was being held without any information; and he posted

1 a full cash bond to the County. He got a receipt; and
2 he had family members calling trying to get him out of
3 custody, and he couldn't do it. And the only reason he
4 couldn't get out of custody is because Sheriff Coe,
5 County Attorney Brent Smith, and the rest of the actors
6 participating in Operation Lone Star decided that they
7 didn't think people charged with criminal trespass
8 deserved to be released when they are entitled to be.
9 And that is only because they wanted to transport him
10 and other individuals like him to Customs and Border
11 Patrol.

12 The evidence is overwhelming, Judge, that
13 all of the intent and application of Operation Lone Star
14 is disenfranchising non-violent individuals that are
15 just existing at the border. And this is especially
16 true for Mr. Guzman Curipoma, but it is true of all
17 2,000 individuals that are being arrested pursuant to
18 the statute for non-violent misdemeanor offenses.

19 And so we respectfully ask the Court to
20 remember that the Applicant and the representative for
21 the State have stipulated to the fact that he was
22 arrested pursuant to Operation Lone Star and to -- and
23 to grant relief in this case to Mr. Guzman Curipoma
24 because the State of Texas has done him a terrible
25 disservice already. And the longer that he remains

1 subject to this unconstitutional restraint that he is
2 currently subjected to, the longer it is going to be
3 before he can move on and prove that this was an
4 inappropriate thing that happened to him.

5 THE COURT: Thank you.

6 Will you give me just a minute? You may
7 have seen me fumbling. It looks like my computer has
8 lost power. So just a minute.

9 *(Off the record)*

10 THE COURT: So, Ms. Taylor.

11 **CLOSING ARGUMENT**

12 MS. TAYLOR: Thank you, Your Honor.

13 So I would initially note that with regard
14 to the Attorney General's involvement, the State would
15 call the Court's attention to *State v. Stephens*; and I
16 don't know that it has a S.W.3d cite yet, but it's
17 numbers PD-1032-20 and PD-1033-20 out of the Court of
18 Criminal Appeals. It's an opinion that was handed down
19 on December 15th, 2021.

20 In that case, the Court considered the
21 question of the Attorney General's involvement in
22 certain types of cases on the district level. And the
23 Court held that absent the consent and deputization
24 order of a local prosecutor or the request of a district
25 or county attorney for assistance, the attorney general

1 has no authority to independently prosecute criminal
2 cases in trial courts.

3 The Court further held "Any attempt to
4 overlap the Attorney General's constitutional duties
5 with county and district attorneys' constitutional
6 duties in the sense of a Venn diagram of sorts is
7 unconstitutional. Practically speaking, any overlap is
8 necessarily invitational, consensual, and by request; a
9 county or district attorney must request the assistance
10 of the Attorney General."

11 And for the record, the District Attorney
12 of Travis County has not requested the Attorney
13 General's assistance in this matter.

14 Moving on to the question of cognizability
15 of this pre-trial writ, we have already mentioned
16 *Ex Parte Perry*, which is a critical case out of the
17 Court of Criminal Appeals on this issue. And we have
18 also already discussed, collectively, that Applicant's
19 claims could be characterized as an as-applied
20 constitutional challenge.

21 Applicant has today established, in the
22 State's opinion, that he has been arrested, processed,
23 detained, and is currently restrained as part of
24 Operation Lone Star. Applicant has a strong argument
25 that his claim falls within the exception allowing a

1 Court to consider an as-applied challenge in a pre-trial
2 writ as discussed in *Ex Parte Perry*. In that case, the
3 Court of Criminal Appeals said that certain types of
4 as-applied challenges may be raised by pre-trial habeas
5 because the particular constitutional right at issue in
6 the as-applied challenge is the type that would be
7 effectively undermined, if not vindicated, prior to
8 trial.

9 Ms. Etter testified today that, I believe,
10 there were over 2,000 arrests under OLS, under Operation
11 Lone Star so far; and no trials have been scheduled in
12 Kinney County. This Applicant, who the record reflects
13 has been under restraint for months on a misdemeanor
14 trespass charge, is unlikely to face trial any time soon
15 in Kinney County, Texas, where the justice system has
16 been overwhelmed by over 2,000 Operation Lone Star
17 misdemeanor arrests. And, therefore, we think
18 Applicant, upon that showing and all the numerous delays
19 and procedural irregularities, has a very good case that
20 it falls within the exception outlined for the type of
21 case that would be effectively undermined, if not
22 vindicated, prior to trial, the exception outlined in
23 the *Ex Parte Perry* case.

24 Further, we would note that granting
25 relief in this case would not deprive the Kinney County

1 law enforcement officials of their ability to
2 investigate, arrest, and prosecute criminal trespass
3 violations under ordinary and lawful procedures and in
4 recognition of the due process rights at issue.

5 I think that the evidence today has also
6 shown that the orders, proclamations, and statements
7 made by Governor Abbott, DPS agents, and other Texas
8 officers and officials confirm that the purpose of the
9 Operation Lone Star trespass arrest program, which
10 resulted in Applicant's arrest and detention, and the
11 enhancement of his criminal trespass charges pursuant to
12 a disaster proclamation issued by the Governor of Texas,
13 that the purpose of that program is to identify, arrest,
14 detain, and punish migrants illegally present in Texas
15 in order to, quote/unquote, secure the border and to
16 send -- and this is a quote from Governor Abbott; this
17 is contained within Applicant's Exhibit E, and it's an
18 excerpt -- to send a message that if they come across
19 the border in the State of Texas, they are not going to
20 be caught and released like under the Biden
21 Administration. They are going to be spending time
22 behind bars.

23 The plain intent -- and I'm -- end quote.

24 The plain intent of the above described
25 executive directives and administrative actions is to

1 authorize and direct state and local law enforcement to
2 apprehend individuals on pre-textual criminal trespass
3 charges based on their perceived illegal immigration
4 status, funnel migrants --

5 (Reporter admonition)

6 MS. TAYLOR: I apologize.

7 -- funnel migrants arrested under
8 Operation Lone Star through a parallel criminal justice
9 system with frequent delays, separate jurists, and
10 procedural irregularities not used for any other state
11 offenders, and incarcerate arrested individuals for
12 weeks or months in state prisons without arraignment or
13 trial on their state offense and without federal
14 direction or supervision and in contravention of federal
15 immigration policies and procedures in the case of
16 *Arizona v. United States*.

17 Although federal law allows state and law
18 enforcement officers to cooperate with the Attorney
19 General in the identification, apprehension, detention,
20 or removal of aliens not lawfully present in the United
21 States -- and this is a quote from a Fifth Circuit
22 opinion, *Villas at Parkside Partners v. City of Farmers*
23 *Branch, Texas* -- the United States Supreme Court has
24 held that unilateral state action to detain exceeds any
25 coherent understanding of the term "cooperation" under

1 federal law, end quote.

2 In sum, Texas' Operation Lone Star program
3 amounts to unilateral state action to identify, arrest,
4 detain, and punish aliens perceived to be not lawfully
5 present in the United States without federal direction
6 or supervision and in contravention of federal
7 immigration policies and procedures. As such, the
8 Operation Lone Star program unlawfully encroaches on
9 federal immigration law, policy, and procedures, which
10 is constitutionally reserved to the United States
11 Government under the Supremacy Clause.

12 The State of Texas may have understandable
13 frustrations with the problems caused by illegal
14 immigration at our border. Nevertheless, the state --
15 and this is a quote from *Arizona v. United States* -- may
16 not pursue policies that undermine federal law.

17 For the above reasons and in light of its
18 obligations under Texas law to ensure that justice is
19 done, the State is compelled to pray that this Court
20 find that Applicant has met his burden of proof and he
21 is entitled to relief.

22 Thank you.

23 *(Reporter clarification)*

24 THE COURT: Relief. Entitled to relief.

25 All right. Mr. Schulman.

1 MR. SCHULMAN: Thank you, Your Honor.

2 **CLOSING ARGUMENT**

3 MR. SCHULMAN: First, I would advise the
4 Court that, in my opinion, the *Stephens* case cited by
5 Ms. Taylor is in opposite in that it pertained to the
6 AG's authority to initiate prosecutions. The question
7 in this case is whether the AG has a right to defend
8 prosecutions as being constitutional.

9 Second, we would reurge our initial
10 argument that, despite what happened this morning, the
11 writ was never issued. And the purpose of this hearing
12 is to determine whether it should issue the writ. We
13 would suggest to you that there is no connection
14 whatsoever between this prosecution in Travis County
15 other than the fact that all the lawyers live here. On
16 the other hand, the case is 100 percent connected to
17 Kinney County, and that is the county to which the writ
18 should be returnable. Your Honor should decide not to
19 rule on the merits but to change the return to Kinney
20 County District -- to the District Court in Kinney
21 County and let that Court decide the constitutionality
22 of the arrest of Mr. Guzman Curipoma's arrest.

23 Finally, irrespective of the other
24 arguments, the Applicant has not met his burden of
25 showing that anything is unconstitutional as applied to

1 him. Exhibit DD does not pertain in any way to what was
2 involved in the officer's motivation or assignment at
3 the time of the arrest. On the other hand, Exhibit CC
4 demonstrates that the Applicant was not arrested by a
5 military officer. He was arrested by a DPS trooper in a
6 railcar in a UPS railyard, along with, I believe, nine
7 other individuals.

8 So there's no evidence the DPS trooper was
9 not acting on probable cause to affect a justifiable
10 arrest under state Law. There is no evidence that the
11 DPS officer was not assigned to the district which
12 includes Kinney County prior to Operation Lone Star.
13 Neither of the exhibits attached to the State's answer
14 or -- or Exhibit CC demonstrate any connection between
15 Operation Lone Star and this Applicant.

16 There is no evidence that the defendant
17 was arrested because of Operation Lone Star; no evidence
18 that the defendant would not have been arrested if there
19 was no Operation Lone Star. And as applied to
20 Mr. Curipoma, the operation of the statute is not
21 unconstitutional as applied to him.

22 Thank you.

23 THE COURT: All right.

24 I do make the findings requested by the
25 Applicant and agreed to by the State and award the

1 relief requested by the Applicant and agreed to by the
2 State.

3 If y'all will prepare an order and send it
4 to me that provides the relief that you've requested,
5 then I will sign it.

6 MS. COGLIANO: Yes, Judge. I will prepare
7 that right away.

8 THE COURT: All right. Thank y'all.

9 Y'all are excused.

10 *(Hearing concluded)*

1 STATE OF TEXAS)

2 COUNTY OF TRAVIS)

3 I, Michelle Williamson, Official Court Reporter in
4 and for the 345th District Court of Travis, State of
5 Texas, do hereby certify that the above and foregoing
6 contains a true and correct transcription of all
7 portions of evidence and other proceedings requested in
8 writing by counsel for the parties to be included in
9 this volume of the Reporter's Record in the above-styled
10 and numbered cause, all of which occurred remotely via
11 videoconference in open court or in chambers and were
12 reported by me.

13 I further certify that this Reporter's Record of the
14 proceedings truly and correctly reflects the exhibits,
15 if any, offered by the respective parties.

16 WITNESS MY OFFICIAL HAND this 17th day of January,
17 2022.

18
19 /s/ Michelle Williamson_____

20
21 Michelle Williamson, CSR
22 Texas CSR #4471
23 Expires: 01/31/2024
24 Official Court Reporter
25 345th District Court
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Monday, March 14, 2022

Hon. Deanna Williamson, Clerk
Court of Criminal Appeals of Texas
201 W. 14th St., Austin, Texas 78701

Re: *State ex rel Brent Smith v. Judge Jan Soifer*, No. WR-93, 354-02
In re State Ex Rel Brent Smith v. The Court of Appeals for the Third Judicial District (No. WR-(93,354-04).

Dear Ms. Williamson:

I am in receipt of a letter efiled in the first referenced case and dated March 14, 2022, although filed on March 13, 2022, from Acting Ass't County Attorney for Kinney County David A Schulman. It is not evident from the face of the document whether his filing was some sort of supplementary brief or just an attempt by the writer to address the members of the court on a personal level. However, it is clearly intended to persuade the court to take a particular action in the case, so, on behalf of the accused in, *The State of Texas v. Jesus Alberto Guzman Curipoma*, (Third Court of Appeals (No. 03-22-00032-CR., I submit this response.¹ I ask that my response be routed to the court in the same manner as that of the original letter from Counsel from Kinney County.

I too have read all the filings in the various related cases and have also received extensive information about the proceedings in the criminal courts of Kinney County related to arrests occasioned by Operation Lone Star. I have been practicing criminal defense law for almost 44 years. During that time, I have been honored by my peers to serve as the president of the Texas Criminal Defense Lawyers Association (TCDLA) and the National Association of Criminal

¹ Kinney County suggests in its letter that the court consolidate with the first referenced case and others its challenge to the ruling in this case by Application for Writ of Prohibition urging the Court of Criminal Appeals to, in effect, reverse a decision by the Third court of appeals in this case. *In re State Ex Rel Brent Smith v. The Court of Appeals for the Third Judicial District* (No. WR-(93,354-04). Consequently, my response is filed in that case, in which I am one of the attorneys of record.

Defense Lawyers (NACDL). Relevant to the issues at hand, during my term as president of NACDL and in the years before in other officer's positions, I had the opportunity to oversee projects where court watchers were assigned to observe the proceedings in various jurisdictions which were represented to us as engaging in particularly egregious denials of due process. I regularly read reports from the court watchers describing what they observed and approved some sort of litigation or other judicial intervention by NACDL. While those reports were upsetting and warranted legal redress, none of the situations that I reviewed approached the degree and magnitude of the denial of rights I've observed in Kinney County in connection with Operation Lone Star. I am saddened and frankly, embarrassed that such a situation is occurring in the state of my birth and of my continuous residence for 69 years. It reminds me of the stories I've read about the abuses that occurred regarding people of color in this state in bygone eras which I had assumed were no longer occurring because as a society, we've advanced beyond that. However, my assumptions were wrong. This situation rivals any that have preceded it.

My information about the Kinney County situation comes from the cases that lawyers in my office are personally handling, reports from other lawyers that I know and trust and from reports generated by the American Civil Liberties Union. Those circumstances are very succinctly described in the filing in this court titled, *The Response of Real Parties in Interest Opposing Relator's Application for Writ of Prohibition in In re State ex rel. Brent Smith, Relator, Judge Jan Soifer, Respondent, 438 Habeas Petitioner, Real Parties at Interest, No. WR-93,354-02*. I direct the courts attention to that filing and will not repeat in detail its contents here. However, in partial summary, defendants are being held in custody in some cases for months without counsel and without a proper charging instrument having been filed. Appointment of counsel after arrest is routinely delayed and ranges between 2 and 139 days. Charging instruments are filed usually between 30 and 90 days on Class A misdemeanor offenses. In 73 cases complaints alone have been pending between 153 and 208 days. Generally, cases are set for arraignment between 90 and 120 days after arrest. At arraignment, defendants are offered the opportunity to plead guilty for "time served" to be released for jail regardless of whether the cases have merit. If they refuse to give up their rights associated with trial, they remain in jail indefinitely. To date, few if any trials have been scheduled in Kinney County and none have taken place. Thus, the length of the actual sentence of incarceration served, depends on how fast the court docket the case for arraignment or trial rather than the particularized facts of the case.

Hearings on writs of habeas corpus to enforce the clear dictates of Article 17.151 C.C.P. which commands the release on personal bond or a reduced bond where no charging instrument has been filed, with the writs returnable to Kinney County have not proven to be an adequate remedy. Months long delays have occurred from the filing of the writs to a hearing date, defeating the purpose of the remedy. Judges appointed to handle the cases who've expressed a willingness to grant relief have been removed through efforts of Kinney County officials. Judges in Kinney County now simply refuse to set habeas petitions for hearing or do so after lengthy delay. Nowhere among the voluminous filings offered to this court by Kinney County is any denial of the existence of these circumstances. Instead, it attacks the remedy authorized by statute employed to challenge the illegal detentions.

Unlawful detention or prosecution is not without a legal remedy. From grade school we've heard of the "great writ" the origins of which date back to the Magna Carta. Through the history of Anglo-Saxon jurisprudence, writ of habeas corpus has been held up as the ultimate remedy

against government oppression which cannot be made unavailable except in extraordinary circumstances. What my client and others have sought to do is make effective use of the great writ.

As a young lawyer, I often found myself with time on my hands and I occupied myself by undertaking such odd tasks as reading the entire text of the Texas Code of Criminal Procedure. It was during one of those reading sessions that I first stumbled on Art. 11.06 C.C.P. which makes a writ, prior to indictment, returnable to any county in the state. I can't say that I understood the importance of that article when I first read it. Over the years I had discussions with several lawyers with more experience than I and of greater accomplishment about where that article fits into the statutory scheme. I learned that most believed it to be the last resort to preserve the effectiveness of the great writ where a prosecution has been brought in a county that is unable or unwilling to provide a meaningful hearing on a writ petition.

When I learned of the circumstances in Kinney County, it struck me that the situation warranted the admittedly unusual step that it authorized by the plain, unambiguous language of Art. 11.06. Accordingly, I urged the lawyers who are associated with me or otherwise look to me for guidance to utilize the procedures authorized by that statute to vindicate the constitutionally guaranteed rights of the individuals they represent. Counsel for Kinney County asserts that we should not be able to utilize the writ of habeas corpus procedure so authorized, because neither he nor other prosecutors have ever heard of it. I suggest that neither he nor his peers have ever seen a situation like that in Kinney County. I further venture to guess that many of the prosecutors he has spoken with would not allow such a situation to persist in their jurisdictions.

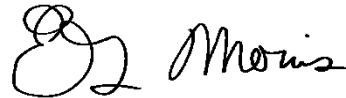
The situation the court is confronted with may come before you infrequently, but the issue of giving effect to the clear language of a statute is not a novel one. Counsel for Kinney County seems to put forth no other argument than, the legislature made a poor choice in authorizing this procedure. It is not this court's providence to pass judgment on the wisdom of a statute. However, if it were, approving a remedy that ensures the availability of writ of habeas corpus to secure fundamental due process rights to those accused of a crime seems to reflect sound judgement. Of course, no argument can be convincingly made that Art. 11.06 doesn't authorize the procedure we've followed in these cases. The language of the statute is as simple, clear, and unambiguous as the proverbial Ned's First Reader.

If Kinney County wants to prosecute 3,000 people for criminal trespass, that is a decision for the leaders of that county to make. However, whether they will be allowed to do so while denying the basic rights to which all accused are entitled, is to be determined by the courts. Art. 11.06 allows full, timely access to duly elected district courts. Those unlawfully incarcerated in Kinney County have become pawns in the larger political debate about whether the Biden administration is adequately addressing border crossings. It is consistent with the core purpose of the writ of habeas corpus to ensure that the rights of individuals are not extinguished by the whim of political leaders yielding to the mood of the moment. And further, in the parlance of rural East Texas where I was raised, what is happening in Kinney County just ain't right.

Rather than attacking the remedy, Kinney County can eliminate the grounds for relief by scrupulously honoring and enforcing the rights of the individuals with the same zeal and expenditure of resources that they have devoted to initiating the prosecutions. We ask this court

to deny the relief requested by Kinney County, give effect to the plain meaning of Art. 11.06, and thus assure the continued vitality of the great writ.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "E. G. Morris". The signature is fluid and cursive, with the first name "E. G." written in a more compact, stylized manner and the last name "Morris" written in a more legible, cursive script.

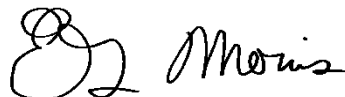
E. G. Morris
SBN#14477700
505 W. 12th St. Suite 206
Austin, Texas 78723
(512)478-0758
egm@egmlaw.com

Counsel for Jesus Alberto Guzman Curipoma

CERTIFICATE OF COMPLIANCE

This is to certify that: (1) this document, created using Microsoft Word software, contains 1773 words, excluding those items permitted by Rule 9.4 (i)(2)(B), Tex.R.App.Pro., and complies with Rules 9.4 (i)(2)(B) and 9.4 (i)(3), Tex.R.App.Pro.; and (2) on March 14, 2022, a true and correct copy of the above and foregoing letter has been transmitted via the eService function on the State's eFiling portal, to each of the following individuals:

1. Judge Jan Soifer (jan.soifer@traviscountytexas.gov)
2. Holly Taylor (holly.taylor@traviscountytexas.gov)
3. Addy Miro (addymiro@msn.com);
4. David A. Shulman (zdrdavid@daidschulman.com);
5. Angelica Coglian (coglianodefense@gmail.com);
6. Robert Doggett (rdoggett@trla.org);
7. Kristin Maria Etter (ketter@trla.org);
8. Rachel Garza (rgarza@trla.org);
9. Billy Pavord (BPavord@trla.org);
10. Michelle Norred (michelle.norred@oag.texas.gov);
11. Kimberly Gdula (Kimberly.Gdula@oag.texas.gov);
12. Laura Kiick (laura.kiick@oag.texas.gov);
13. William Wassdorf (will.wassdorf@oag.texas.gov);
14. Christopher Hilton (christopher.hilton@oag.texas.gov);
15. Brent Smith (bsmith@co.kinney.tx.us);
16. Laurie K. English (lke112da@gmail.com);
17. Casey Solomon (casey.solomon@oag.texas.gov);
18. Edward Marshall (edward.marshall@oag.texas.gov).



E. G. Morris

NO. _____

EX PARTE

§
§
§
§
§

IN THE _____

JESUS ALBERTO GUZMAN
CURIPOMA

JUDICIAL DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

APPLICATION FOR WRIT OF HABEAS CORPUS

TO THE HONORABLE JUDGE OF SAID COURT:

Applicant Jesus Alberto Guzman Curipoma, by and through undersigned counsel, presents this pretrial Application for Writ of Habeas Corpus pursuant to the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, Article VI of the United States Constitution, Article 1, Sections 10 and 19 of the Texas Constitution, and Chapters 21 and 45 of the Texas Code of Criminal Procedure.

I. Applicant is detained illegally.

Applicant is illegally confined and restrained of his liberty by State of Texas, who has charged him with the misdemeanor crime of criminal trespass in the *State of Texas v. Jesus Alberto Guzman Curipoma*, case number 10726CR, Kinney County, Texas. He was arrested and charged by complaint with a misdemeanor. (See: Exhibit A) Article 11.22 of the Code of Criminal Procedure defines “restraint” for the purposes of pretrial habeas corpus litigation as “the kind of control which one person exercises over another, not to confine him within certain limits, but to subject him to the general authority and power of the person claiming such right.” Mr. Guzman Curipoma’s liberty is restrained by virtue of his obligation to appear in court and respond to these charges brought against him by the State of Texas.

II. This Court has jurisdiction to issue the writ.

Article V of the Texas Constitution gives some courts jurisdiction to issue the writ of habeas corpus. Section 5 of Article V says, “Subject to such regulations as may be prescribed by law, the Court of Criminal Appeals and the Judges thereof shall have the power to issue the writ of habeas corpus.” Section 8 says, “District Court jurisdiction consists of exclusive, appellate, and general jurisdiction of all actions, proceedings, and remedies, except in cases where exclusive, appellate, or original jurisdiction may be conferred by this Constitution or other law on some other court, tribunal, or administrative body.” This gives the district court “plenary” power to issue the writ of habeas corpus. Ex parte Schmidt, 109 S.W.3d 480, 482 (Tex. Crim. App. 2003).

Additionally, Article 11.05 of the Code of Criminal Procedure says, “The Court of Criminal Appeals, the District Courts, the County Courts, or any Judge of said Courts, have power to issue the writ of habeas corpus; and it is their duty to grant the writ under the rules prescribed by law.” While Article 17.151 provides that an applicant “confined on a charge of misdemeanor” *can* be sought from “the county judge of the county in which the misdemeanor is charged to have been committed,” it provides only that the application “may” be so made, and therefore, the provision is not mandatory. Jurisdiction to entertain a petition lies in all other county and district courts and judges. *See Ex parte Williams*, 786 S.W.2d 781, 782 (Tex. App.—Houston [1st Dist.] 1990, pet. ref’d) (district court has and can exercise habeas jurisdiction concerning prosecution pending against applicant in county court); *see also Ex parte Gomez*, No. 07-16-00196-CR, 2016 Tex.App. LEXIS 11461 (Tex.App. – Amarillo Oct. 20, 2016).

The Code of Criminal Procedure likely articulates that a county judge *can* hear applications for writs of habeas corpus simply to add an *additional* jurisdiction from which those being unconstitutionally detained can obtain relief. The legislature perhaps also intended to indicate a *preference* for such applications to be filed in front of the court in which the criminal case is pending

absent good cause, though there is no support for this in the code or caselaw reviewed by undersigned counsel.¹

Here, there is an abundance of good reason to look for relief outside of the jurisdiction in which the applicant is facing the underlying charge. Kinney and Vel Verde County and District Courts have been inundated with criminal cases arising out of Operation Lonestar – an initiative developed by Governor Abbott and DPS to target and arrest migrants at the border. As detailed in the Kinney County Attorney’s application for a writ of prohibition, attached to this filing as Exhibit B, the average number of new criminal cases in Kinney County is under 100, whereas there have been *thousands* of arrests in just that county thus far under OLS.² Currently, it is taking **at minimum** 6 weeks to be heard after filing an application for writ of habeas corpus, despite the expedited and extraordinary nature of habeas relief.

In order to accommodate the dramatic influx of cases resulting from Operation Lone Star (OLS), the Presiding Judge of the Sixth Administrative Judicial Region recently assigned three visiting judges to take on some of the caseload. However, quickly after, Judge Shahan of Kinney County relieved those judges of their duties, exacerbating the already tenuous and increasingly unconstitutional backlog. Exhibit C to this filing includes the letter from Judge Shahan removing the additional judges, as well as a letter from Texas Rio Grande Legal Aid – the organization handling the vast majority of OLS Cases – to Presiding Judge Ables detailing the scheduling debacle in the Kinney

¹ This is suggested by language in *Ex parte Smallwood*, 87 Tex. Crim. 268, 283 S.W. 293 (1920): “Under our procedure, applications for writs of habeas corpus in misdemeanor cases should be made to the county judge of the county in which the applicant resides.” However, such language most likely reflects the reluctance of the Court of Criminal Appeals to exercise its original habeas jurisdiction rather than a well-considered policy of preference for county rather than district courts. Cf. *Ex parte Phelper*, 433 S.W.2d 897, 898 (Tex. Crim. App. 1968) (citing *Smallwood* for proposition that Court of Criminal Appeals will not exercise its original jurisdiction given availability of county and district courts and judges).

² Additionally, in that filing, the County Attorney incorrectly and bizarrely asserts that he is entitled to have the Court of Criminal Appeals direct the local visiting judges to not grant relief in any case involving an application for pre-trial writ of habeas corpus. Exhibit A, p.7. This in and of itself constitutes good cause to have the applications heard in another county.

County courts.

Should this Court believe good cause is required to grant this application and set the matter for hearing outside of Kinney County, it certainly exists here. Applicant is unlikely to receive an expedited hearing on this Application for Writ of Habeas Corpus in the county in which the underlying case is pending. Additionally, the interested parties have already been conducting these hearings via zoom even in front of the local court, so there is no added inconvenience, expense, or detriment to the State in granting this application and setting the matter for an expedited virtual hearing.

III. Mr. Guzman's arrest and charge under is unconstitutional because it occurred under the authority of "Operation Lonestar," a program authorized by Governor Abbott that violates the Supremacy Clause of the United States Constitution.

A. Federal preemption is an appropriate basis for pretrial habeas corpus relief

A pre-trial writ of habeas corpus is an appropriate avenue for relief when that relief is based upon the assertion that the charging instrument relies on an unconstitutional state statute, rule, or other legislation. *Ex parte Smith*, 178 S.W.3d 797, 801 (Tex. Crim. App. 2005); *See also Ex Parte Weise*, 55 S.W.3d 617, 620 (Tex. Crim. App. 2011). Constitutional claims may be raised pretrial if they are facial challenges or if the underlying rights would be effectively undermined if not vindicated before trial. *Ex parte Perry*, 483 S.W.3d 884 (2016).

The Supremacy Clause, Article VI, Section 2, of the U.S. Constitution provides:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding.

Thus, a state enactment is invalid if it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," *Hines v. Davidowitz*, 312 U.S. 52, 67

(1941), or if it regulates “the activities of the Federal Government,” *Mayo v. United States*, 319 U.S. 441, 445 (1943).

B. Regulating immigration is an area of exclusive federal control

The Constitution affords Congress the power to “establish an uniform Rule of Naturalization.” U.S. Const., art. I § 8, cl. 4. It also affords the President of the United States the authority to “take Care that the Laws be faithfully executed.” U.S. Const., art. II § 3. Congress has exercised its authority over immigration to make laws governing the entry, admission, presence, status, and removal of noncitizens within the United States by enacting the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1101 et seq., and other laws regulating immigration. These laws codify the Executive Branch’s authority to inspect, investigate, arrest, detain, and remove noncitizens who are suspected of being, or found to be, unlawfully in the United States. See 8 U.S.C. §§ 1182, 1225, 1226, 1227, 1228, 1231, 1357.

Federal law also creates criminal sanctions for those who facilitate the unlawful entry, residence, or transportation of noncitizens within the United States. See 8 U.S.C. §§ 1323, 1324, 1327, 1328. The States and their political subdivisions cannot obstruct or discriminate against the execution of federal immigration laws. See *Arizona v. United States*, 567 U.S. 387, 394-95 (2012). State laws that have attempted to supplement federal immigration law with parallel state criminal penalties for immigration offenses have, thus, been struck down by courts. See e.g., *Villas at Parkside Partners v. City of Farmers Branch, Tex.*, 726 F.3d 524 (5th Cir. 2013) (en banc); *Arizona*, 567 U.S. at 400-410; *We Are America v. Maricopa Cty. Bd. of Sup’rs*, 297 F.R.D. 373, 387 (D. Ariz. 2013). Texas courts have granted relief in the criminal context when state criminal enforcement has intruded into Congress’s comprehensive federal immigration system. See *Hernandez v. State*, 613 S.W.2d 287, 290 (Tex. Crim. App. 1980); see also *Ex parte Johnson*, 591 S.W.2d 453,

454 (Tex. 1979).

C. Operation Lone Star was implemented by the Texas Government to “secure the border”

Mr. Guzman Curipoma’s arrest was directed by “Operation Lone Star,” Governor Greg Abbott’s mass arrest program targeting the U.S.-Mexico border and buttressed by an emergency declaration suspending basic legal rights of people suspected to be migrants. In unequivocal language, Operation Lone Star (OLS) directs state law enforcement personnel to specifically target men (and only men) who appear to be foreign nationals from Mexico or Central America for arrest and detention on misdemeanor charges for the purpose of “securing the border.” Governor Abbott’s executive order, attached as Exhibit D, declared a state of “disaster” based on “federal government policies” and federal “inaction” that he claimed had led to “a dramatic increase in the number of individuals unlawfully crossing the international border.” The disaster declaration described OLS as intended to “deter illegal border crossings.”

OLS exploits the Texas legal system to reach Governor Abbott’s singular goal of creating a new class of “criminal aliens” that can be deported quickly and prevented from returning. The program has resulted in a separate and unequal criminal legal system for individuals suspected of entering the United States unlawfully. In this farcical alternative, constitutional rights are suspended, and due process is non-existent. This month, the American Civil Liberties Union, Texas Civil Rights Project, and Texas Fair Defense Project jointly requested a federal investigation into OLS under Title VI of the Civil Rights Act. The complaint, attached as Exhibit E, clearly and effectively details the development and implementation of Governor Abbott’s initiative.

D. Operation Lone Star violates the Supremacy Clause by preempting federal immigration policy.

The application of the state criminal trespass penalties under Operation Lone Star is pretextual and a clear attempt to regulate migration by Texas authorities acting in direct conflict

with federal immigration law. Like the invalid law in *We Are America*, the government's use of criminal trespass in this case is an attempt to utilize state officials to "secure the border" and criminalize unlawful presence and entry itself. *See* 297 F.R.D. at 387. In response to this initiative by Governor Abbott, Joaquin Castro and 25 other members of the United States Congress called upon the Department of Justice to "review and investigate Governor Abbott's Operation Lone Star program regarding both its likely violation of the Supremacy Clause and its treatment of migrants, especially in regards to an individual's constitutional right to due process" in a letter attached to this filing as Exhibit F.

The Department of Justice has already begun civil litigation in federal court over Governor Abbott's "border security" initiatives, successfully acquiring an injunction precluding the application of one of Governor Abbott's executive orders, No. GA-37, restricting the ground transportation of suspected migrants. The complaint, attached as Exhibit F, alleges the executive order "obstructs the Federal Government's arrangements... and directly interferes with the administration of federal immigration law." In granting the injunction, Judge Cardone rejected the State of Texas's argument that the border prosecutions were valid because they were conducted for the purpose of managing and improving public health rather than to enforce immigration policy. The Federal District Court's order, attached as Exhibit G, determined that "[r]egardless of the object of the [Governor's executive order], its effect is clear" and "any state legislation which frustrates the full effectiveness of federal law is rendered invalid by the Supremacy Clause."

Operation Lone Star's intent and effect is clear. The Texas Government is restraining the liberty of thousands of individuals under the guise of criminal trespass prosecutions in an attempt to usurp federal immigration legislation and strong arm the federal government into enacting policies that Governor Abbott would prefer. In his own letter to President Biden

detailing Operation Lone Star, attached as Exhibit G, Governor Abbott threatened that “in the absence of federal action, Texas will continue to step up.” In an attempt to secure support from other State governments, and convince them to similarly violate the Supremacy Clause, Governor Abbott authored a letter, attached as Exhibit H, in which he admitted that “securing our border with Mexico is the federal government's responsibility. But the Biden Administration has proven unwilling or unable to do the job... [therefore,] Texas and Arizona have stepped up to secure the border in the federal government's absence.” In his own communications and public statements, Governor Abbott has acknowledged his efforts through Operation Lone Star violate the United States Constitution’s Supremacy Clause.

Mr. Guzman Curipoma, an oil engineer with a masters degree and no criminal history, is in pursuit of his valid and strong asylum claim. The unlawful charges against him were brought in a misguided and unconstitutional endeavor to create a State based immigration policy.

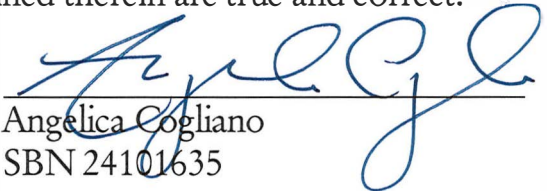
WHEREFORE, PREMISES CONSIDERED, Applicant prays that this Honorable Court will grant and issue a Writ of Habeas Corpus to the Sherriff of Kinney County to produce the person of Jesus Alberto Guzman Curipoma, either physically or, if he is or has been released on bond or recognizance, then constructively through his attorney of record before this Court for hearing in this Court on the legality of the restraint as contested in the application.

Respectfully submitted,
/s/ Angelica Cogliano
 Angelica Cogliano, SBN 24101635
 E.G. Morris, SBN 14477700
 Addy Miró, SBN 24055984
 Attorneys for Applicant
 505 West 12th Street, Suite 206
 Austin, TX 78701

VERIFICATION

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Angelica Cogliano and I am the Petitioner in the above-styled and numbered *Application for Writ of Habeas Corpus*. I have read the above and foregoing application, and I hereby swear that the facts contained therein are true and correct.”

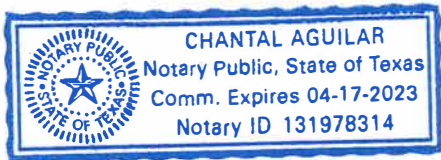


Angelica Cogliano
SBN 24101635

Executed on January 4, 2022.



Notary Public in and for the State of Texas



NO. D-1-GN-22-000058

EX PARTE

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IN THE 126TH

JUDICIAL DISTRICT COURT OF

JESUS ALBERTO GUZMAN CURIPOMA

TRAVIS COUNTY, TEXAS

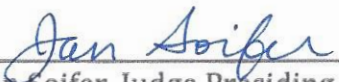
Order Granting Habeas Corpus Relief

On this date, the Court heard the application for habeas corpus relief filed by Jesus Alberto Guzman Curipoma. Guzman Curipoma appeared via Zoom in person and through his counsel, Angelica Cogliano,, E.G. Morris, and Addy Miro, and the State of Texas appeared through Travis County Assistant District Attorneys Holly Taylor and Nancy Nicolas. Attorney David Schulman announced that he was appearing as an acting Assistant County Attorney for Kinney County.

Having signed the Writ of Habeas Corpus and set it for hearing on the merits, and having considered the application and its attachments, the State's answer, the pleadings on file, the testimony, admissible evidence, stipulations agreed to by Applicant and the State, and the argument of counsel, the Court FINDS that Applicant Guzman Curipoma has met his burden of proof and is entitled to the relief requested.

It is therefore ORDERED that the misdemeanor trespassing case pending against Applicant, *State of Texas v. Jesus Alberto Guzman Curipoma*, Case Number 10726CR, in Kinney County, Texas, be dismissed without delay.

Signed on January 13, 2022.


Jan Soifer, Judge Presiding



Greg Abbott  @GregAbbott_TX
Governor candidate, TX



The Texas Dept. of Public Safety continues to arrest illegal migrants coming across the border and sending them to jail.

Here is an example from this morning with [@TxDPS](#) working with the Kinney County Sheriff's Office.



Kinney County Sheriff's Office

23m · 



This is happening! 17 Illegals this morning.
At the Kinney County Sheriffs Office.
Judge Narci Villarreal magistrated each illegal alien.
Thank you DPS for all your help.



11:35 AM · Aug 6, 2021



 1.9K  Reply  Copy link



Tweet



Greg Abbott ✓

@GregAbbott_TX

📁 Governor candidate, TX



The Texas Department of Public Safety & Texas National Guard are taking unprecedented steps to ensure the safety of our communities & secure the border.

Illegal immigrants caught trespassing into Texas will be arrested & sent to jail.



10:51 AM · Sep 28, 2021 · Twitter for iPhone

156 Retweets **25** Quote Tweets **820** Likes



Tweet



Greg Abbott ✓

@GregAbbott_TX

✉ Governor candidate, TX



Biden opened the floodgates on our southern border.
Texas is stopping it.

The [@TexasGuard](#) & [@TxDPS](#) have started arresting
illegal migrants coming across the border & putting
them in jail.

No more catch & release.



1:50 PM · Jul 25, 2021 · Twitter Media Studio

614 Retweets **115** Quote Tweets **3,033** Likes



Tweet



Greg Abbott ✓

@GregAbbott_TX

🏠 Governor candidate, TX



Texas & other states are stepping up to do Biden's job —protecting our communities & securing the border.

Tomorrow I'll be in Del Rio with [@GovRonDeSantis](#) for a border security briefing.

Stay tuned.



3:46 PM · Jul 16, 2021 · Twitter Media Studio

514 Retweets **70** Quote Tweets **2,709** Likes



Greg Abbott ✓

@GregAbbott_TX

📌 Governor candidate, TX

...

Texas Border Wall update:

New Border Wall Construction Begins near West Texas Town.

This is in addition to the new program to arrest and jail illegal immigrants arrested for trespassing in Texas.

breitbart.com/border/2021/07... via @BreitbartNews



breitbart.com

New Border Wall Construction Begins near West Texas Town

EAGLE PASS -- Site preparation work for one segment of Abbott's recently announced border wall project is visibly underway south of the city.

6:57 PM · Jul 23, 2021 · Twitter Web App



Greg Abbott ✓

@GregAbbott_TX

📄 Governor candidate, TX

Meeting with [@TDEM](#), [@TXMilitary](#), [@TxDPS](#), & the Texas Commission on Jail Standards about our plan to catch and jail illegal migrants crossing the border.

The Biden administration caused this crisis, Texas is stopping it.



2:41 PM · Jul 26, 2021 · Twitter Web App

216 Retweets **38** Quote Tweets **1,046** Likes



Greg Abbott ✓

@GregAbbott_TX

🏠 Governor candidate, TX

The Texas Dept. of Public Safety continues to arrest illegal migrants coming across the border and sending them to jail.

Here is an example from this morning with [@TxDPS](#) working with the Kinney County Sheriff's Office.



Kinney County Sheriff's Office

23m · 🌐

This is happening! 17 Illegals this morning.
At the Kinney County Sheriffs Office.
Judge Narci Villarreal magistrated each illegal alien.
Thank you DPS for all your help.



GregAbbott_TX



Greg Abbott ✓

@GregAbbott_TX

📄 Governor candidate, TX

The Texas Department of Public Safety & Texas National Guard are taking unprecedented steps to ensure the safety of our communities & secure the border.

Illegal immigrants caught trespassing into Texas will be arrested & sent to jail.



10:51 AM · Sep 28, 2021 · Twitter for iPhone

156 Retweets **25** Quote Tweets **820** Likes

 **Greg Abbott** ✓
@GregAbbott_TX
Governor candidate, TX

Texas is taking ACTION to secure our southern border.



0:56 62.9K views

10:33 AM · Oct 8, 2021 · Twitter Media Studio

541 Retweets 115 Quote Tweets 2,981 Likes



Greg Abbott ✓

@GregAbbott_TX

👤 Governor candidate, TX

...

Texas National Guard is authorized to arrest illegal immigrants trespassing in Texas.

They arrested these in the Rio Grande Valley.

We opened thousands of jail beds for all of the new arrests.

They are also working with [@TxDPS](#) to seal border regions.



7:17 PM · Oct 10, 2021 · Twitter for iPhone

659 Retweets **96** Quote Tweets **3,658** Likes

← **Tweet**



Greg Abbott ✓

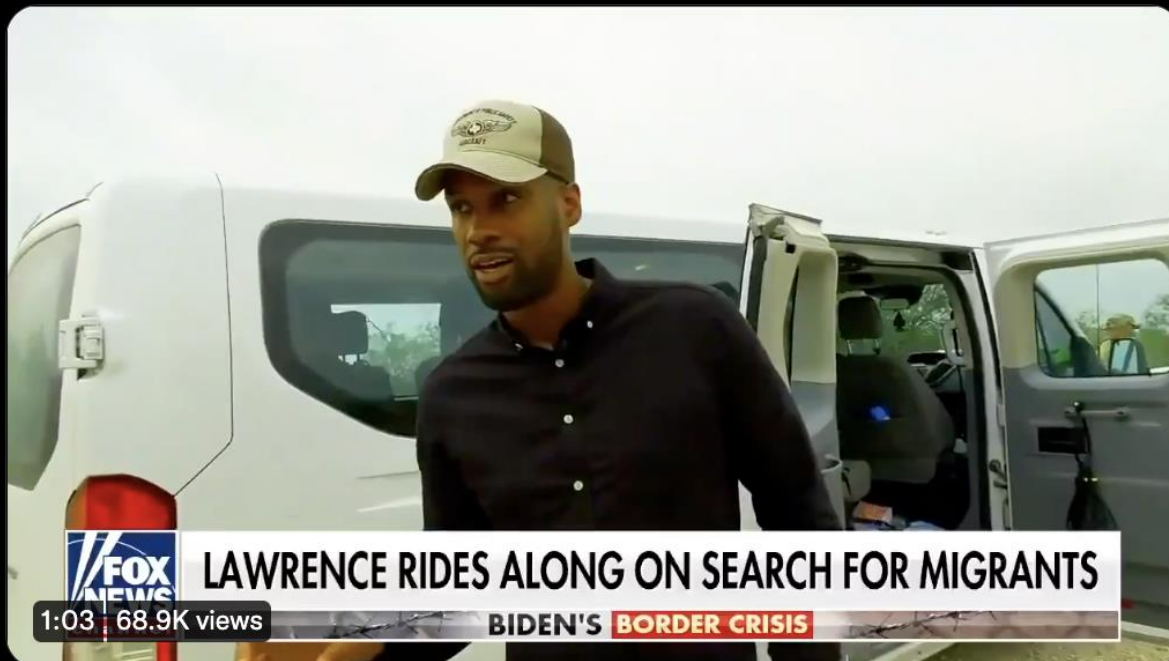
@GregAbbott_TX

🏠 Governor candidate, TX

Texas Department of Public Safety & Texas National Guard arrest illegal immigrants trespassing on private property.

We put them behind bars, not catch & release.

Texas continues to secure our border.



12:30 PM · Oct 14, 2021 · Twitter Media Studio



Greg Abbott ✓

@GregAbbott_TX

📌 Governor candidate, TX

Texas Dept. of Public Safety arrest illegal immigrants hiding in rail cars.

They will be put behind bars, not sent to Border Patrol for catch & release.

@TxDPS, along with the Texas National Guard, have made thousands of arrests this year through #OperationLoneStar.





Jay Root ✓
@byjayroot



Some background: there have been questions about this document I obtained showing the [@TxDPS](#) policy only arresting adult males not traveling as part of family units. [#txlege](#)

From: [Fernandez, Noe](#)
To: [REDACTED]
Cc: [REDACTED]
Subject: FW: Criminal Trespass Checklist
Date: Tuesday, July 20, 2021 6:57:00 PM
Attachments: [criminal trespass checklist.docx](#)

Good evening Sergeants,

This form is to be completed by those arresting anyone in Val Verde County for Criminal Trespass.

As a reminder, this will only be filed on adult males not traveling as family units.

Thanks in advance,

*Lieutenant Noe Fernandez
Highway Patrol
Del Rio*

12:54 PM · Aug 24, 2021 · Twitter for iPhone



Brent Smith

October 9, 2021 · 🌐



Chad Prather ✓

October 9, 2021 · 🌐

It's time to equip the Texas Guard to defend our Texas border. It's time to equip Texas militias. It's time to equip Texas citizens. The time is upon us. The federal government has abandoned Texas. The governor is full of shit. The Haitian migrants have stated that they are ready for war. Are we?

17

6 Comments 4 Shares

Like

Share



Ray Zavadil

Working on it brent. Will be geaded do an soon with some of my guys. We need to talk

Like 28w



Donna Granchay Baird

Ready. I don't know anyone without a gun and the will to use it against the bad guys.

Like 28w





Brent Smith

September 21, 2021 · 🌐







Office of the Texas Governor | Greg Abbott

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Governor Abbott, DPS, Texas National Guard Mark One Year Anniversary Of Operation Lone Star ()

Governor Abbott, DPS, Texas National Guard Mark One Year Anniversary Of Operation Lone Star

March 4, 2022 | Austin, Texas | [Press Release](#)

Governor Greg Abbott, the Texas Department of Public Safety (DPS), and the Texas National Guard today mark the one-year anniversary of Operation Lone Star (OLS)—an unprecedented, comprehensive mission to address the Biden-made crisis at Texas' southern border. Officially launched on March 4, 2021, OLS integrates DPS assets, including Texas Highway Patrol Troopers, Special Agents, Texas Rangers, Rotary and Fixed Winged Aircraft and Tactical Boat Teams, along with the Texas National Guard and local law enforcement to secure the border.

Since the launch of OLS, multi-agency efforts have led to more than 208,000 migrant apprehensions, along with more than 11,800 charges for criminal offenses— including more than 9,300 felony charges. Members of notorious gangs like the Texas



Governor Abbott's Operation Lone Star Anniversary Message

Chicano Brotherhood, Bloods, Mexican Mafia, MS-13, and others have been taken off the streets. DPS has arrested sex offenders, weapons traffickers, previously convicted and deported criminal immigrants, drug dealers, and other wanted criminals. In the fight against fentanyl, DPS has seized over 269 million lethal doses throughout the state.

Governor Abbott released a video to commemorate the achievements of the mission, Texas law enforcement, and soldiers.

"We launched Operation Lone Star to do the job that Washington would not," said Governor Abbott.

"Within weeks of taking office, President Biden turned our southern border into a porous mess where criminal aliens wandered across the Rio Grande River without anyone to interdict them. I refused to stand by and let our state be overrun by criminals and deadly drugs like fentanyl. Texans have never backed down from a challenge, and we won't start now, because our efforts are stemming the tide of illegal drugs and criminals flooding into Texas.

Thank you to the many men and women who are protecting our southern border, including the DPS troopers, Texas National Guardsmen, Texas sheriffs, and all the law enforcement officers who serve and protect us every day."

"I thank Governor Abbott for his tremendous leadership in protecting the people of Texas by working to secure our southern border," said DPS Director Steven McCraw. "One year into this mission, DPS has arrested thousands of dangerous criminals, apprehended tens of thousands of illegal immigrants,

and seized dangerous contraband. Let it be very clear – an unsecured international border with Mexico is the most significant threat to the state of Texas.”

“The Texas National Guard soldiers and airmen are proud to stand alongside DPS and other agencies in protecting the people and property of Texas,” said Maj. Gen. Tracy Norris, the Adjutant General of Texas. “We continue to construct fencing and barriers, turn back and apprehend migrants, and do the job we were sent here to do—we are Texans serving Texas.”

Since the initial launch of Operation Lone Star in March 2021, the Governor, DPS, and the Texas National Guard have increased the comprehensive efforts of the mission.

On March 17, 2021, Governor Abbott expanded OLS to include efforts to crack down on human trafficking and illegal border crossings. State agencies were directed to work with local law enforcement, communities and private landowners to prevent, detect, and interdict transnational criminal activity flowing between the ports of entry.

On May 31, 2021, Governor Abbott issued a disaster declaration for counties along Texas’ southern border to free up additional resources to help address the epicenter of the crisis. The Governor’s disaster declaration also directed the Texas Health and Human Services Commission not to provide state licensing for the federal government’s program of housing unaccompanied alien children.

On June 10, 2021, Governor Abbott held a Border Security Summit in Del Rio with leaders from DPS,

the Texas National Guard, and the Texas Division of Emergency Management. The summit brought together Texas sheriffs, police chiefs, county judges, mayors, district attorneys, and landowners to hear from state officials on the actions that the State of Texas is taking to secure the southern border and address the ongoing humanitarian crisis. The Governor invoked the Emergency Management Assistance Compact with the State of Arizona during the summit. Under this interstate compact, Governor Abbott and Arizona Governor Doug Ducey continue to ask other states to send law enforcement officials to assist them in making arrests.

The Governor also announced that DPS, with the assistance of the Texas National Guard, would begin arresting individuals trespassing on private property. In July, Governor Abbott opened the first jail booking facility of its kind in the state in Val Verde County. At the facility, individuals who are arrested for committing border-related crimes in the surrounding region are booked and magistered, then transferred to the Briscoe or Segovia TDCJ Unit. Governor Abbott launched a second jail booking facility in Jim Hogg County in February 2022.

In June 2021, Governor Abbott announced plans to construct a border wall in Texas. Just six months later, the Governor debuted the construction of the Texas border wall in Rio Grande City. The Governor also directed the Texas National Guard to begin construction on a temporary border barrier. To date, the Texas National Guard has constructed more than eight miles of fencing and has secured signed agreements for an additional 62 miles. Additionally, the State of Texas recently acquired 1,700 unused

32-foot-tall panels that will be used for the border wall. These panels were originally intended for President Trump's border wall, but President Biden halted construction once he took office.

In July 2021, Governor Abbott issued an Executive Order restricting ground transportation of migrants who pose a risk of carrying COVID-19 into Texas communities.

In September 2021, Governor Abbott announced the availability of \$100 million in grant funding for local governments through the OLS Grant Program to enhance interagency border security operations supporting OLS, including the facilitation of directed actions to deter and interdict criminal activity and detain non-citizens arrested for state crimes related to the border crisis.

That same month, Governor Abbott signed House Bill 9 into law, which provides an additional \$1.8 billion in state funding for border security over the next two years, leading to nearly \$3 billion in funding being allocated to border security in Texas.

Operation Lone Star was crucial to addressing the Haitian migrant crisis that occurred in Del Rio last September. A massive surge of migrants began gathering at the International Bridge in Del Rio with about 7,000 arriving in a single day. In the two days that followed, that number nearly doubled to about 13,500 migrants, mostly from Haiti. Governor Abbott ordered DPS and the Texas National Guard to mobilize additional resources including roughly 1,000 DPS personnel in the area and some 650 DPS vehicles were put into place to form a steel barrier of

protection. The surge included approximately 400 additional Texas National Guard soldiers and 40 Humvees, to assist in deterring criminal activity, flanking the area and keeping the region secure.

Additional actions to secure the border by Governor Abbott include:

- Signing a law to make it easier to prosecute smugglers bringing people into Texas
- Signing 15 laws cracking down on human trafficking in Texas
- Signing a law enhancing penalties for the manufacturing and distribution of fentanyl
- Taking legal action to enforce the Remain in Mexico and Title 42 policies in Texas

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Governor Abbott, DPS Launch “Operation Lone Star” To Address Crisis At Southern Border

March 6, 2021 | [Press Release](#)

Governor Greg Abbott and the Texas Department of Public Safety (DPS) today launched Operation Lone Star to combat the smuggling of people and drugs into Texas. The Operation integrates DPS with the Texas National Guard and deploys air, ground, marine, and tactical border security assets to high threat areas to deny Mexican Cartels and other smugglers the ability to move drugs and people into Texas.

“The crisis at our southern border continues to escalate because of Biden Administration policies that refuse to secure the border and invite illegal immigration,” said Governor Abbott. “Texas supports legal immigration but will not be an accomplice to the open border policies that cause, rather than prevent, a humanitarian crisis in our state and endanger the lives of Texans. We will surge the resources and law enforcement personnel needed to confront this crisis.”

This decision follows a meeting last month between Governor Abbott and DPS Director Colonel Steve McCraw where they discussed strategies to enhance safety and security along the border.

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OPERATION LONE STAR

Texas empties prison to prepare to detain immigrants arrested during ramped-up border enforcement

The prison — Dolph Briscoe Unit in Dilley — will have capacity for about 1,000 people.

BY REESE OXNER JUNE 17, 2021 2 PM CENTRAL

COPY LINK



A Honduran migrant holds his daughter's hand at an immigration checkpoint in Nuevo Laredo. Miguel Gutierrez Jr./The Texas Tribune

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Texas officials have emptied a prison to prepare it to hold immigrants arrested by state troopers as Gov. [Greg Abbott](#) ramps up the state's law enforcement presence on the border.

Officials began transferring prisoners Wednesday from Dolph Briscoe Unit in Dilley — a small city around an hour drive southwest of San Antonio — to other facilities with available capacity so the prison can be used as a central holding facility for immigrants arrested as part of Abbott's Operation Lone Star, Texas Department of Criminal Justice spokesperson Jeremy Desel said in a statement. It will be used to hold immigrants who have been charged with state or federal crimes, he said. It is unclear what charges these could entail, and Desel could not confirm whether that would include low-level charges.

Officials have not yet started detaining immigrants in the facility, but it will have capacity for about 1,000 people. Desel confirmed the facility has no air conditioning, which is true about many prisons in the state. Weather forecasts for the area show highs surpassing 100 degrees next week.

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“The state of Texas continues to deal with a record-high influx of individuals illegally crossing the border,” Desel said in the statement. “To address the ongoing crisis, Governor Abbott is directing state resources to arrest and confine those individuals crossing the border unlawfully and who have committed a state or federal crime.”

Plans for the prison were [first reported](#) by Keri Blakinger, a reporter with The Marshall Project.

The clearing of the prison began Wednesday — the same day that Abbott announced details of his plan for a Texas border wall, saying he would [reallocate \\$250 million](#) in funds from the TDCJ budget as a “down payment” while also [Appx. 362](#) soliciting private donations.

“State leadership has assured the agency that this is a temporary measure, and the money will be reappropriated without a negative impact on TDCJ,” Desel said.

Abbott referenced the available prison beds during his press conference Wednesday and said that the state may “need staff to staff those jail beds as well as others that may come up.” He said some states may send jail or enforcement officers to work with state agencies and local officials to meet staffing demands.

Desel said the prison’s current staff members — who total around 230 — will continue to staff the facility, and no external officers will be enlisted at this time. The TDCJ will provide “appropriate services” to those detained in the prison in conjunction with the Windham School District and the University of Texas Medical Branch, Desel said. But he said he couldn’t give details on what those services would include.

President Joe Biden and Abbott have continued to publicly spar over immigration policies as the number of immigrants crossing the border has increased. In March, Abbott launched Operation Lone Star, which deployed the National Guard and “air, ground, marine and tactical border security assets” to the border. The Republican governor declared the situation at the border a disaster on May 31. Biden’s administration has threatened legal action over [Abbott’s previous order](#) instructing state agencies to yank child care licenses from facilities that serve migrant children.

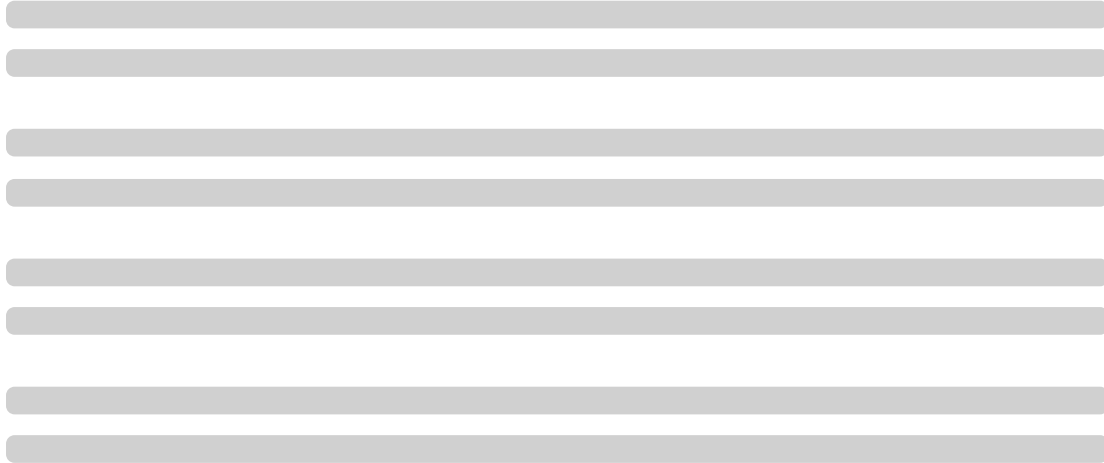
In his order, Abbott instructed the Texas Department of Public Safety to enforce all state and federal laws on trespassing, smuggling and human trafficking and ordered two state criminal justice commissions to provide guidance and request “any necessary” waivers to give counties “the flexibility needed to establish adequate alternative detention facilities.”

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“The Texas Department of Criminal Justice (TDCJ), like other state agencies, is ready to assist in Operation Lone Star,” Desel said.

Politics reporter James Barragán contributed to this article.

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Appx. 364



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U.S.

Texas Jails Fill With Migrants as Border Arrests Overwhelm Courts

Of 1,500 trespassing arrests under Operation Lone Star, 3% have led to convictions, while hundreds wait weeks or months in jail



Surge in Migrant Families at U.S. Southern Border Tests Border Cities

Border cities like Brownsville, Texas, saw their resources stretched as they work to manage the growing number of migrant families crossing the U.S.-Mexico border in March. WSJ's Michelle Hackman reports. Photo: Verónica G. Cárdenas

By [Elizabeth Findell](#) [Follow](#) and [Alicia A. Caldwell](#) [Follow](#)

Nov. 8, 2021 8:00 am ET

PRINT TEXT

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DEL RIO, Texas—Texas Gov. Greg Abbott's effort to use state law enforcement to enforce immigration law by arresting migrants for trespassing is overwhelming local courts and resulting in few convictions. Appx. 366



Most of the rest are waiting weeks or months in jail for their cases to be processed.

As of Nov. 1, some 1,006 migrants were jailed under the initiative. The state has focused resources for Operation Lone Star in two border counties, Kinney and Val Verde. Of them, 53% have been there longer than 30 days and 14% longer than 60 days, according to court records. Two men from Cuba were in jail 98 days after they were arrested.

It is unusual for people arrested on misdemeanor charges in Texas to stay in jail for more than a few days, according to defense attorneys and prosecutors. Single men from Honduras or Mexico—a category that includes most of the Operation Lone Star arrestees—are usually deported in a day or two when caught by the Border Patrol. Only the federal government has the authority to deport foreigners. Some men jailed under Operation Lone Star end up being released in the U.S. while they pursue immigration cases, lawyers for the migrants said.

A spokeswoman for Mr. Abbott said the Republican governor “initiated a new policy of arrest and jail—instead of President Biden’s catch and release program—to stop this revolving door and deter others considering entering illegally.”



Texas law-enforcement officials monitoring a rail line last month in Kinney County.

PHOTO: ELIZABETH FINDELL/THE WALL STREET JOURNAL

Appx. 367

Mr. Abbott announced the effort last spring, as the number of illegal border crossings started to soar. He has taken an aggressive stance in wanting to jail migrants, including requesting permission from city officials in Del Rio to



Del Rio officials declined, saying the Border Patrol was already handling the situation, according to Mr. Lozano.

The Texas National Guard, which is controlled by the governor, is working in tandem with state troopers on the border. Other states have deployed National Guard troops to the border in the past, but they generally have helped federal authorities with tasks including vehicle maintenance and monitoring surveillance cameras. Texas is the first to implement a strategy of arresting illegal border crossers on trespassing charges. It has deployed thousands of troopers and guard troops in the effort.

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PREVIEW

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Mr. Abbott this year shifted more than \$250 million from various corners of the state budget, including Texas' prison system, to help pay for Operation Lone Star. The Republican-controlled state legislature approved an additional \$3 billion for border security.

County attorney offices working on Operation Lone Star have just a few staffers who are accustomed to small caseloads. Kinney County, population 3,659, has seen more than 1,000 misdemeanor arrests in two months. Previously, the county clerk hadn't received a single misdemeanor criminal case for about three years, officials there said.

To help, the state has lent prosecutors to counties and brought judges out of retirement to hear cases remotely.

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Of 170 Operation Lone Star cases resolved as of Nov. 1, about 70% were dismissed, declined or otherwise dropped, in some instances for lack of evidence, according to court records. The remaining cases ended in plea agreements.

Appx. 368



In two cases, Val Verde County Attorney David Martinez refused to prosecute after evidence showed migrant defendants were directed onto private property by officials before their arrests, he said. Body-camera footage in one showed troopers waving two men and a woman from Venezuela through an open gate.

“The body language of the trooper was welcoming and then they turn around and arrest him,” Mr. Martinez said, noting that people have to know they are unwelcome to be guilty of trespassing.

At a hearing last month in Kinney County, retired county Judge Vivian Torres ordered the release of four migrants because their charging documents were faulty and raised questions about the length of time they have waited in jail.

“These individuals have been in custody since Aug. 22, which I dare say is a violation of their rights,” Judge Torres said.

A prosecutor agreed to dismiss charges in those cases.



Arrests under Operation Lone Star can occur on the properties of landowners who have agreed to join the state's efforts.

PHOTO: ALICIA A. CALDWELL/THE WALL STREET JOURNAL

Arrests have occurred on the properties of landowners who have agreed to join the state's efforts, including ranches and a rail yard where migrants often hide on trains from Mexico.

Appx. 369



Troopers have been ordered by the state to arrest only single men, leaving women, families and unaccompanied children to be arrested and processed by Border Patrol agents.



Migrants seeking asylum walked along a road in Del Rio, Texas, after crossing the Rio Grande in September.

PHOTO: JULIO CORTEZ/ASSOCIATED PRESS

There are no publicly available government records of what has happened to several hundred migrants arrested for trespassing whose cases were dismissed or who were released from jail on bond.

Federal immigration authorities have said removal decisions are made on a case-by-case basis.

Kristin Etter, a lawyer with Texas RioGrande Legal Aid, said some migrants who likely would have been deported had they been immediately caught by the Border Patrol are waiting in the U.S. after being released by state authorities.

“A lot of our clients have actually benefited from Operation Lone Star as far as their immigration case,” said Ms. Etter, whose group has represented more than 500 Operation Lone Star arrestees.



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- [Texas Governor Says State Will Build a Wall Along Mexico Border](#) (June 16)
 - [Biden Administration Threatens to Sue Texas Over Shelters Housing Immigrant Children](#) (June 8)
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Write to Elizabeth Findell at Elizabeth.Findell@wsj.com and Alicia A. Caldwell at Alicia.Caldwell@wsj.com

Appeared in the November 9, 2021, print edition as 'Texas Jails Fill With Migrants Under State Policy'.

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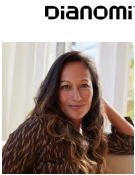
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THE EPOCH TIMES



Kinney County Attorney Brent Smith in his office in Brackettville, Texas, on Oct. 29, 2021. (Charlotte Cuthbertson/The Epoch Times)

PREMIUM **IMMIGRATION & BORDER SECURITY**

In Pursuit of a Secure Border: Small Texas County Leads Charge Against Border Crime

By [Charlotte Cuthbertson](#)

November 11, 2021 Updated: November 11, 2021

A Print

KINNEY COUNTY, Texas—Charging an illegal immigrant with a misdemeanor such as criminal trespass sounds simple enough.

But throw 1,008 cases at a small county with a jail that has 14 spaces and a court system that usually handles six or seven cases per month—using Microsoft Word—and the wheels start to fall off.

Appx. 375

On June 10, when Texas Gov. Greg Abbott **directed** state troopers to start arresting illegal aliens—on charges including trespass, criminal mischief, and evading on foot—officials in Kinney County jumped on the idea.

County Sheriff Brad Coe was keen to stick illegal immigrants with any charges he could to deter them from coming to his county.

“We’re going to try to hold these people accountable,” Coe said. He also wanted to get them in the system because the illegal aliens captured in Kinney County have evaded Border Patrol, so they’re unknown.

Since January, ranchers and local law enforcement had seen an unprecedented increase in the number of illegal aliens traversing the county, and they’d given up on expecting federal solutions. Local ranchers, tired of cut fences and property damage, signed affidavits allowing the sheriff and the Texas Department of Public Safety (DPS) to press charges on their behalf.

Although Abbott announced the Operation Lone Star **border security** initiative in June, it took almost two months to secure enough jail space and for the DPS to work out the process. The state set up a temporary 100-bed detention center in neighboring Val Verde County and cleared out the 1,000-bed Briscoe Unit in Dilley.

Meanwhile, in July, almost 10,000 illegal aliens evaded Border Patrol in the Del Rio Sector, according to preliminary Customs and Border Protection numbers.

By August, DPS was ready to start the initiative in Val Verde and Kinney counties. In Kinney, DPS assigned a small team to work the brush near the U.S.–Mexico border in areas of high foot traffic. The officers quickly started arresting an average of 25 illegal aliens per day from private ranches, often at night.

At the sheriff’s office, state troopers and local jail staff took about two hours to complete the paperwork and magistrate seven Mexicans who were arrested late on Aug. 7. They’d been walking for two days before being caught on a ranch.

Texas State Troopers complete paperwork after arresting illegal immigrants for criminal trespass on a local ranch, at the Kinney County Sheriff's Office in Brackettville, Texas, on Aug. 8, 2021. (Charlotte Cuthbertson/The Epoch Times)

Two said they had already tried crossing a month ago but got caught by Border Patrol and expelled. Another man, who said he was aiming to get to New York, said this was his third time trying to get through. He said his cousin intended to pay the \$4,000 smuggling fee upon his delivery to New York.

Several said they'll probably try again, while others weren't as enthusiastic. They all said a "travel agent" on the Mexican side of the border directed them on where to cross, gave directions of where to walk, and had planned to coordinate a vehicle pick-up for them.

Appx. 377

At first, Kinney County Justice of the Peace Narce Villarreal came down to the sheriff's office in the middle of the night to magistrate the groups before DPS transported them the 30 miles to the Val Verde facility. But the hours became untenable and the sheriff's office parking lot was overwhelmed with detainees, so the whole process was moved to Val Verde.

From Val Verde, the illegal aliens would eventually be transported 126 miles to the Briscoe Unit in Dilley while they waited for their court hearing. Subsequently, some were then transported another 200 miles to the Segovia jail facility in Edinburgh.

Illegal immigrants wait to be magistrated on trespassing charges in Kinney County outside the Sheriff's Office in Brackettville, Texas, on Aug. 6, 2021. (Charlotte Cuthbertson/The Epoch Times)

The Prosecution

Appx. 378

Meanwhile, Kinney County Attorney Brent Smith was scrambling to take up the flood of new cases. He had started the job in January and was building the backend process on the fly. He had to go to the county commissioners to request a software system that would streamline the paperwork on the cases—Word documents had become too unwieldy under the volume. He contacted two other county attorneys to double-check that his complaints were solid.

Smith said he's filed around 900 charges for criminal trespass since August, with more pending, and has had to rely heavily on Mason District Attorney Tonya Ahlschwede, who is part of Texas's border prosecution unit, to keep up.

Former chief of the Del Rio Border Patrol Sector Austin Skero, who retired at the end of July, also joined the unit as an investigator.

After a misdemeanor arrest, Smith examines the evidence in the case file from the sheriff's office or DPS. If it's determined that trespass occurred, he'll file a complaint against the individual for trespassing, which is a Class B misdemeanor. The charge is elevated if the individual has a deadly weapon, is found more than 100 feet past the property line on agricultural land, or if the alleged crime took place during a disaster (the county has been in a perpetual state of disaster since April).

Once charged, the suspect will make a plea, and if he pleads guilty, he'll most likely get time served and be turned over to Immigration and Customs Enforcement (ICE).

It's not a hefty penalty, but "we're hoping they avoid our county," Smith said.

The maximum punishment for a Class B misdemeanor in Texas is 180 days in jail and a \$2,000 fine, whereas a Class A is one year in jail and a \$4,000 fine.

Recent trail camera photos of illegal aliens provided by ranchers in Kinney County, Texas. (Courtesy of ranchers)

As the cases have piled up, it has become a race against time for Smith.

“If they don’t make bail, they’re in jail the whole time until trial,” he said. From the time of the arrest, he has 30 days to file a Class A misdemeanor complaint against a detained individual before the habeas corpus statute requires a personal recognizance (PR) bond to be set and the individual released.

In some cases, Smith received the arrest files from DPS on day 29, or even beyond day 30. In other cases, the complaints were filed within the 30 days, but the inmate had bonded out of jail and was nowhere to be found.

Appx. 380

Logistics and lack of manpower were the bottlenecks, he said.

“Because what the state did, when they planned on this process, they got the jails set up, they got defense attorneys funded, but not one prosecutor was there to get the prosecution set up for this,” he said.

“So we’re playing catch up, trying to get the resources at the same time to do everything—versus the defense had everything set up from the very beginning.”

On Oct. 14, Abbott announced \$36.4 million in grant funding toward border prosecutions and 12 border counties, including more than \$3.1 million in grant money to Kinney County, as part of Operation Lone Star.

But the money doesn’t just appear in the county bank account. It’s grant money that requires an application process, and the county must carry the costs in the meantime.

Smith has already spent more than his annual office supplies budget (about \$1,200) on file folders for the trespass cases.

Court Proceedings

The first of Kinney County’s cases came up on the court docket during the last week of October. They were conducted over video conference with retired judges coming in to fill the gaps.

On Oct. 26, Judge Vivian Torres sat on the virtual bench. The cases proceeded slowly, with frequent pauses for the translator to ensure the defendant understood the goings-on.

Defense lawyer Sylvia Delgado had arranged a plea deal for several defendants that reduced their charge from a Class A to a Class B misdemeanor and a sentence of “time served,” with court costs being waived.

The defendants pleaded guilty, and the judge agreed to the plea deal terms, which included a 72-day sentence, which had been served.

Delgado said she’s been assigned about 190 cases so far by the Lubbock Public Defenders’ Office and has been focusing on getting the first ones out of jail because they’d been detained so long.

Appx. 381

She said she meets her clients via Zoom video conference. “And I tell them specifically: ‘You have not been forgotten. I’m your attorney, I’m going to work to get you out,’” Delgado told The Epoch Times on Oct. 28.

Delgado said she lets them know that she’ll attempt to get them released on a no-fee PR bond, try to get charges reduced, and, if they want to plead guilty, ask for time served.

“And then, unfortunately, when I go back to see them before docket, a lot of them are gone,” she said. Of her 18 clients for the Nov. 2 court docket, she has only been able to follow up with the six who are still in jail.

“I met with Joselito, and Joselito had told me, ‘Well, Ms. Delgado, I just want to plead guilty and get sent back to Mexico. I just want to go back to Mexico.’”

“So I was looking for Joselito. And he’s nowhere to be found.”

She was told by the other inmates that Joselito was transferred to ICE, while others had returned to Mexico after bonding out.

Defense lawyer Sylvia Delgado (bottom-right) speaks during an arraignment hearing for an illegal alien charged with criminal trespass in Kinney County, on Oct. 28, 2021. (Screenshot/The Epoch Times)

Other defense attorneys have also said they had no idea where their clients were after they bonded out.

The region's district attorney, Suzanne West, told The Epoch Times that she believes inmates who bond out are released to ICE.

ICE didn't confirm that it was taking custody of the inmates, or what happened next. A spokesperson said the agency is following the enforcement priorities set out by the Biden administration.

Appx. 383

“In Texas and elsewhere, ICE conducts an individualized determination in each case to assess whether arrest and removal is warranted. This determination includes an assessment of aggravating and mitigating factors, as well as a determination of whether the person is removable under the law,” ICE spokesperson Monica Yoas stated in an email to The Epoch Times.

“ICE fully respects the civil rights and liberties of all people when conducting this assessment.”

The Texas Department of Criminal Justice, which operates the Briscoe and Segovia jails, said that as of Oct. 29, the Briscoe unit held 654 illegal alien inmates, with 536 from Kinney County, 105 from Val Verde, 10 from Zavala, and three from Frio County. In Segovia, all 291 illegal alien inmates are from Kinney County.

Delgado said she has asked for an investigator to help on the ground to find the missing people and has meanwhile obtained a continuance in court for their hearing dates.

“If they’re truly lost, like we don’t ever hear from them again, we don’t know what happened. If I can’t really find out, then they’re probably just going to keep getting reset,” she said.

“So I suppose a warrant may issue, but we’re not there yet. We’re just not there in that system yet.”

Most of the defendants on the next several dockets, totaling about 60 cases, had their cases dismissed because defense lawyers argued that the complaints were deficient as they lacked the landowner’s name.

Smith later said he was disappointed that the name of the ranch wasn’t sufficient for the court, as he was hoping to avoid naming the landowner in public records. The landowner’s name is usually included in the arrest file, which the lawyer can access.

“A lot of ranchers are concerned about cartel retribution, possibly, if their name comes up in complaint after complaint after complaint” he said.

“So we can still refile it and prosecute once we correct that information. But you know, they’re not going to show up.”

Appx. 384

Smith's office scrambled to amend the 900 complaints already filed to include the landowner name and the GPS location of the alleged offense.

A total of 52 illegal immigrants from Mexico and Honduras wait to be booked for criminal trespass after being arrested by Texas State Troopers on local ranches, at the Kinney County Sheriffs Office in Brackettville, Texas, on Aug. 8, 2021.
(Charlotte Cuthbertson/The Epoch Times)

Defense lawyers appeared to change tack on the Nov. 2 docket and entered "not guilty" pleas for all their clients who were still present.

The judge subsequently ordered the release of each defendant on a no-fee PR bond and set a pre-trial hearing for Nov. 18.

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Ahlschwede, from the border prosecution unit, told the court on Nov. 2 that several illegal aliens who had been released from jail after paying a cash bond have since been arrested again for criminal trespass in Kinney County.

Smith said one man was released after paying a \$4,000 cash bond. “Then we re-arrested him 10 days ago. And despite it being a multiple offense, they gave a \$500 bond. Well, we filed the motion to revoke [the bond] once we got the case file—which was 10 days after it occurred,” Smith said.

The man had been released three days prior to receiving the motion.

“By the time we got the file, he was already gone. Who knows where he’s at now,” Smith said.

Coe said his office has been juggling a steady stream of people coming in to pay cash bonds with wads of crisp \$100 bills.

“Some of them are \$5,000. Where are they getting the money?” he said. At one point, he had more than half a million dollars in cash sitting in his vault.

“I’d bet there’s a 99 percent chance that they don’t show up [to court],” Coe said of the released illegal alien defendants.

“They’ll probably end up in places like Michigan, Missouri, West Virginia, Washington—we’ll never see them again. So are we doing this all in vain? I mean, it’s doable. It’s very, very new. It’s just getting the mechanism rolling.”

Kinney County Sheriff Brad Coe sets up a pop-up vehicle checkpoint near Brackettville, Texas, on Aug. 16, 2021.
(Charlotte Cuthbertson/The Epoch Times)

Impact

Coe said he hoped the convictions might be a roadblock for illegal aliens if they ever tried to file for some type of assistance or become U.S. citizens.

“That’d be a check mark against them. Some type of consequence has to be there,” he said.

However, in reality, having a trespass conviction on record will act more like a speedbump, according to former immigration judge Andrew Arthur, who is now a resident fellow in law and policy for the Center for Immigration Studies. Appx. 387

“Generally, this isn’t going to have any effect on them from an immigration standpoint, but again, sleeping in a room with 30 guys for six months really does have a way of concentrating one’s attention,” Arthur told The Epoch Times on Oct. 27.

Even if the Texas legislature passes a [bill](#) that would enhance punishment to a third-degree felony for illegal alien trespassers, the impact on future immigration status would be negligible, Arthur said.

“But again, anything that impedes people’s ability to enter the United States, anything that’s going to require them to be detained pretrial, or imprisoned post-trial, is going to be a deterrent,” he said.

“Now, how strong a deterrent effect that is remains to be seen.”

Arthur said the deterrent effect was worth the taxpayer dollars spent on the trespass prosecutions.

“The problem is that Texas is doing the job that the federal government should be doing.”

Volume

The majority of Border Patrol apprehensions along the southwest border occur in Texas. Of the more than 1.6 million illegal alien apprehensions in fiscal year 2021, Border Patrol apprehended almost 958,000, or 58 percent, crossing into Texas.

Customs and Border Protection doesn’t publish the number of illegal aliens that Border Patrol agents have detected but who subsequently evade apprehension, but the internal numbers have sat at around 50,000 per month this year, according to an inside source. It’s impossible to estimate the number of those who aren’t detected at all.

Within the Operation Lone Star border effort, the DPS had made 7,744 criminal arrests as of Oct. 14, including 1,300 for criminal trespass and 6,339 on felony charges. State troopers had been involved in 822 vehicle pursuits, mostly chasing smugglers who were transporting illegal aliens.

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Kinney County has charged significantly more illegal aliens with trespass than Val Verde County so far, which started the initiative at the same time. Other counties, such as Frio and Zavala started prosecuting more recently, while Uvalde and Brooks counties are considering getting started but are strapped with the same lack of resources that Kinney County has experienced.

Smith said the volume of prosecutions coming from Kinney County were a result of the county officials caring about the issue.

“They want to do something more about it than just close your eyes and not watch what’s happening to your county,” he said.

Smith said he’s been accused by a defense lawyer of being racist for prosecuting illegal aliens.

“The criminal complaints make no mention of immigration status or hinge on race. If you come down to Kinney County and trespass on private property, we’ll arrest you too,” he said in a statement on Oct. 26.

Delgado, the defense lawyer, said she hadn’t seen any malfeasance, despite the scramble to pull everything together.

“It’s a big ship and it’s making a large turn in a small canal. And so we are all working really hard to get things moving. And I believe it is starting to unclog,” she said.

Smith predicted that the system will be much more robust within a couple of months.

“What we’re working on right now is tweaking the language of the complaints, researching everything, making sure there’s nothing else they [the defense] can pick at,” he said.

“Now, will this Operation Lone Star continue for the next three years? Probably so. Unless the federal government decides to actually follow the laws passed by Congress—which at the moment they’re not doing.

“The only realistic solution to this crisis will require deploying all of the Texas military on the border and actually prevent the illegal entries from occurring. Right now, it’s like trying to build a dam after the flood gates have already been opened.”

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